Vol. I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1929

No. 528

BROAD RIVER POWER COMPANY, COLUMBIA RAILWAY, GAS AND ELECTRIC COMPANY, AND F. D. CAMPBELL, PETITIONERS,

vs.

STATE OF SOUTH CAROLINA EX REL. JOHN M. DANIEL, ATTORNEY GENERAL

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA

PETITION FOR CERTIORARI FILED DECEMBER 17, 1929

CERTIORARI GRANTED JANUARY 27, 1930

(34,659)

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VOL. I

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[fol. 1]

IN SUPREME COURT OF SOUTH CAROLINA

IN THE ORIGINAL JURISDICTION

Ex Parte: STATE OF SOUTH CAROLINA ex Relatione JOHN M. DANIEL, Attorney-General, Petitioner,

against

BROAD RIVER POWER COMPANY, COLUMBIA RAILWAY, GAS & ELECTRIC COMPANY, and F. D. CAMPBELL, Respondents

[fol. 2]. ORDER TO SHOW CAUSE (MAIN CASE)

Upon reading and filing the verified Petition of the relator herein, and on motion of attorneys for the petitioner, It is Ordered that the respondents to show cause before the Supreme Court of South Carolina, at Columbia, S. C. at the next session thereof, on the first day, at ten o'clock A. M., why the prayer of the petition should not be granted and why the respondents, their agents and servants, should not be ordered and compelled by sad court to restore proper service upon, and to resume and maintain further operation of, their said lines of street railway in the City of Columbia and the surrounding communities owned by them, and such other relief as to the Court shall seem just and proper.

It is Further Ordered that a copy of this Order and of the Petition be served upon the respondents forthwith, and that the respondents are hereby ordered and directed to serve upon the attorneys for the relator their Return to this Order within twenty days from such service, and that thereupon the petitioner have ten days within which to reply or traverse any of the allegations contained in said Return.

Eugene S. Blease, Justice of the Supreme Court of South Carolina.

Certificate to foregoing paper omitted in printing.

IN SUPREME COURT OF SOUTH CAROLINA

PETITION (MAIN CASE)

To the Honorable Supreme Court of the State of South Carolina:

[fol. 3] The petitioner above named suing on behalf of the public and of all municipalities, corporations, citizens, and of all who may care to come in and be made parties to this proceeding, respectfully shows to the Court:

1. That the State of South Carolina is a body politic and has certain rights in the streets of the original City of Columbia, the capital city thereof, which likewise has certain rights and duties as to the control of said streets; and the relator John M. Daniel is the duly elected and qualified Attorney-General of said State.

2. On information and belief that the defendants Broad River Power Company and Columbia Railway, Gas & Electric Company are corporations created and existing under the laws of the State of South Carolina, and having their principal place of business in the City of Columbia, S. C.; that the said Power Company was chartered in July 1924, with capital stock of Twenty Million ($20,000,000.00) Dollars, with power, among other things, to operate street car, gas and electric light service and to acquire stock in other corporations (Corporation book "A", page 510) and did thereafter acquire all the stock in and become merged with and invested with the rights and liabilities of the defendant Railway, Gas & Electric Company; and that the defendant F. D. Campbell is General Manager of both said Companies.

3. On information and belief that the Columbia Railway, Gas & Electric Company (formerly named Columbia Electric Street Railway, Light & Power Company, the name having been changed by amendment to its charter dated 18 May, 1911) was created with a capital stock of Seventy-five Thousand ($75,000.00) Dollars by the Act of 16 December, 1891 (20 Stat. 1453) which authorized the consolidation into [fol. 4] one grant of the powers to construct and operate a street railway system with horse power (formerly conferred upon the Columbia Street Railway Company by Act

of February 9, 1882, 17 Stat. 876), to make, manufacture and sell gas and electricity required in the City of Columbia and neighboring towns for lighting buildings and railway cars, to provide electric motor power for transportation or other purposes, (formerly granted to the Congaree Gas and Electric Company by Act of December 24, 1887, 19 Stat. 1103) and to provide electric motor power for any purposes and to operate street cars with electric power, with consent of City Council over the streets of Columbia, formerly imposed upon the Columbia Electric Street & Suburban Railway & Electric Power Company by Act of December 24, 1890, 20 Stat. 969, and vested the same in said company "subject to all the debts and liabilities" of said companies; that the said Columbia Electric Street Railway Light & Power Company accepted the consolidated franchise and agreed to furnish street car service, gas and electric light and power as long as it enjoyed such franchise, as required by law in the public interest.

4. On information and belief that in pursuance of such powers the said Railway, Gas & Electric Company thereupon obtained the consent of the City of Columbia to furnish such public services, and from time to time to install the equipment therefor, subject to the obligation to obey the city ordinances (Sec. 594) to run their cars at regular intervals daily (Sec. 583) and to maintain its tracks "in good condition" "at all times" (S. 710) as set forth in the "Revised Ordinances" of the City of 1920 and amendments thereto; and thereafter built a large plant for the manufacture of gas and electricity for sale to the public generally [fol. 5] and for the operation of street car service, laid a system of trackage in and around the city and community, using the same poles to carry both the electric light wires and the trolley wires used in the street car service, and generally operating its street car, gas, electric light and power privileges by the same force and equipment as parts of one business.

5. On information and belief that as the city and community grew (from approximately 15,000 in 1890 to over 50,000 in 1925) the said Railway, Gas & Electric Company likewise enlarged and amended its privileges and obligations; acquired the rights and assumed the liabilities of the

Columbia and Eau Claire Electric Street Railway (in 1896) and of the Suburban Transit Company (in 1912), which companies had been chartered in perpetuity for furnishing and maintaining street car service to the communities of Eau Claire and Colonial Heights; entered into contracts with the Columbia Land & Investment Company (a company then developing the portion of the city known as Shandon) on 23 May 1902 to maintain and operate its street cars to and from such communities and the City of Columbia, daily at regular intervals, continuously, for 99 years, that is to 15 August, 2001, and with the North Columbia Land Company in 1906 and 1908 in consideration of Five Thousand ($5,000.00) Dollars to operate such street car service to and from its property and the city continuously, in perpetuity; and made a like contract with the Shandon Annex Company, and that by means of said companies and contracts the City of Columbia and surrounding towns and communities have been largely built up during the past thirty-five years; and that such contracts were intended to and did inure to the benefit of the public who [fol. 6] in purchasing property and settling in the community relied upon the faith that the street car service would continue to be operated under such obligations in perpetuity.

That the said company continued to furnish such combined public services to the community in a fairly satisfactory manner down to about the year 1925, and enjoyed correspondingly greater patronage and income from the business, increasing its capital stock from time to time up to Three Million ($3,000,000.00) Dollars in 1911 and in 1912 had its charter amended so as to continue its rights, powers and privileges and all liabilities and limitations imposed upon it by law (Corporation Book A, page 384) in force and effect in perpetuity.

6. On information and belief that at sometime during the year 1924 or 1925 the defendant Broad River Power Company, or its allied interests having acquired the stock in the defendant Railway, Gas & Electric Company and its subsidiary companies, and having determined to discontinue the street car branch of its franchise, (and having during the previous year been prevented from abandoning street car service in Spartanburg, S. C. by a Supreme Court

decision (Jan. 1924) holding that the obligation to operate the street cars was inseparably connected with the other branches of similar charter rights), conceived the plan, for the purpose of escaping such obligation, of separating the street car department from the other branches of said franchise and of thereafter abandoning the charter rights as a street railway company; and thereafter did, in pursuance of such scheme, on June 15, 1925, attempt to have the Railway, Gas & Electric Company transfer all its valuable property and rights to the defendant Power Company, except certain rights said to be connected with the street car department (Deed Book "CT", page 604) so as [fol. 7] to leave the said Railway, Gas & Electric Company a mere shell of its former self and financially unable to perform its obligations to the public in the operation of the transportation system, said alleged transfer being made with the intent and purpose of having said Railway, Gas & Electric Company thereafter abandon its charter rights and escape the obligation to operate the said railway system; that such ostensible transfer and attempted separation was wholly pretensive, being from one branch of the same organization to another, the Power Company owning all the stock in and having absolute control of the said Railway, Gas & Electric Company, both companies having the same office and officers and being in fact and operating as one public service corporation, and was without consideration, intended to hinder and delay its creditors and particularly the public, and was illegal, null and void.

7. On information and belief that the defendants have since attempted to justify such alleged separation under the Merger Act, which was passed in 1925 at the instance of defendants for the ostensible purpose of enabling the defendant Railway, Gas & Electric Company, Parr Shoals Power Company, Columbia Gas Light Company, and other subsidiary companies, to merge and consolidate with, and transfer their rights to, the defendant Broad River Power Company; but that such act was not intended to and does not authorize such a pretensive transfer or separation or the discontinuance of street car service, and on the contrary expressly provides that any merger or sale should be "without prejudice" "to any rights of any creditors" and should be "subject to the restrictions, omissions and

conditions contained" in the franchises of said companies [fol. 8] (Acts 1925, page 842), and that such fictitious sale and separation, intended to defeat the creditors of said companies and to deprive the public of its rights, was wholly beyond and contrary to the true intent and purpose of said Merger Act.

That moreover if at the time of the said Act it was the purpose of intention of defendants thereafter to use such Act as pretensive authority to discontinue street car service, such secret purpose was illegal and was withheld and concealed from the public whose interests were involved, and even if the language of the Act should be held to embrace such purpose plaintiff avers that the said Act is unconstitutional as impairing the contractual rights of plaintiff and its citizens hereinabove mentioned, and is in violation of the constitution of this State and is null and void.

8. On information and belief that the defendants thereafter, beginning about 1925, and in pursuance of said unlawful plan, instituted a systematic campaign to discontinue the street car system, began to give inadequate and unsatisfactory service, took off various cars and cut down the income, arranged to bring a bus company into the community so as to increase competition and furnish an apparent justification for, and lessen the opposition to, the complete discontinuance of the street car service, and then upon the pretext that the Railway, Gas & Electric Company was without further funds—a pretext and condition which had been foreseen and prearranged when said Railway, Gas & Electric Company had attempted to transfer the bulk of its valuable property to the defendant Power Company—in March 1927 understook to and did completely discontinue all street car service in the community and withdrew all its cars from operation; that the defendants, how- [fol. 9] ever, have since continued to exercise and enjoy in the name of the defendant Power Company, a concern of large financial resources, the franchise for gas, electricity and power, and in many instances to use for such purpose the same equipment formerly used in connection with the street car service; that the said conduct of defendants was unauthorized and illegal, in violation of the terms of their charters and all their public obligations as common carriers and as public service corporations, without legal

justification, and without regard to the rights of the public, but in violation of all such public rights.

9. That said unlawful conduct of the defendants was highly prejudicial to the community; that a large number of the citizens of Columbia and of the surrounding towns with their families have long been patrons of the said Railway system, many of them having purchased their homes in reliance upon the obligations of the defendants to continue such street car service, and they and many industries of the neighborhood of Columbia have become and are dependent upon said street car service for transportation back and forth to and from said city for the purposes of attending to business, or attending schools or churches, and of performing their daily labors; that respondents have neglected to maintain their tracks in the city streets, and are allowing said tracks to get into bad condition; that the interests of the public at large are seriously affected and prejudiced by the failure and refusal of the respondents to perform duties owing to the public under their charter, contract, and laws of the land to furnish service on and keep up the said railway system, by maintaining a regular schedule of car transportation thereon; that many citizens and public bodies, including the Towns of Eau Claire and [fol. 10] Arden, have protested, the Columbia City Council has passed a resolution favoring restoration of street car service, but the respondents have persisted in their refusal, and have absolutely declined, to restore street car service and have indicated their intention to resist, by court action if necessary, any action of the public to require them to resume operations.

10. That the State at large and many municipalities and citizens are adversely affected by respondents' conduct and the matter is one of general public interest, as hereinabove alleged, and that such public interest is suffering, and will continue to suffer irreparable injury unless this court shall by its order grant the relief and compel performance by the respondent companies of the public duties imposed upon them by their charters, contracts and the laws of the land as hereinabove indicated; that the respondent companies are and should be held jointly responsible for the operation of the street car system, and the attempted separation of

such street railway department from the other branches of their franchise is and should be declared pretensive, illegal and inoperative, and the respondents should be enjoined and restrained from abandoning the street car service and should be required and commanded to restore and maintain an adequate transportation system; that the relator brings this action, for such purpose, in the name of the State, in pursuance of his duties, for the benefit of and on behalf of, the public and all bodies and citizens who may be interested in the relief herein demanded.

Wherefore petitioner prays that this court do issue its writ and order to the respondents requiring and compelling them to reinstate and resume the operation of their said [fol. 11] electric railway system, and enjoining and restraining them from abandoning the same, and directing them to furnish and to maintain adequate and satisfactory street car service thereon in the City of Columbia and its environs permanently in accordance with the requirements of their charters, contracts and provisions of law applicable thereto, and ordering and adjudging that the respondent companies are jointly responsible for the operation of the street car service, and that the attempted separation of such transportation department from the other branches of their franchise is pretensive, illegal and void; for the costs of this action, and for such other and further relief as may be just and proper.

John M. Daniel, Attorney-General. Cordie Page, Assistant Attorney-General. Melton & Belser, H. N. Edmunds.

19 July, 1927.

(Duly verified by John M. Daniel.)
(Served 19 July, 1927.)

IN SUPREME COURT OF SOUTH CAROLINA

DEMURRER TO PETITION (MAIN CASE)

The respondents herein demur to the petition on the grounds:

1. That it appears upon the face of said petition that the relator, John M. Daniel, has not the legal capacity to bring

this action since he has no lawful authority under the laws of South Carolina, or from the General Assembly of South Carolina, or leave granted him by any court of South Carolina or judge or justice thereof.

[fol. 12] 2. That it appears upon the face of the petition herein that there is a misjoinder of parties in that it appears that the intervening petitioners, the City of Columbia, the Towns of Eau Claire and Arden, W. B. Burney and Columbia College are improperly joined with the relator because they and each of them are shown to have no cause of action jointly with said John M. Daniel.

3. That it appears upon the face of said petition that this court has no jurisdiction of the subject of this action by petition and order instead of summons and complaint, that the original jurisdiction of the subject matter of said action is vested by the constitution and laws in the Railroad Commission of South Carolina.

4. That said petition does not state facts sufficient to constitute a cause of action in that there is no allegation of any legally binding and enforcible obligation on the part of respondents to operate street cars in the City of Columbia.

Elliott & McLain, Attorneys for Respondents.

Certificate

I, W. C. McLain, of counsel for respondents herein, hereby certify that the foregoing demurrer is meritorious and is not intended for delay.

W. C. McLain.

In Supreme Court of South Carolina

Motion to Strike Out Parts of Petition (Main Case)

To Messrs. John M. Daniel, Cordie Page, Melton and Belser, H. N. Edmunds, C. T. Graydon, Nelson and Mullins, and C. S. Monteith:

[fol. 13] You will please take notice that on the call of the above entitled cause for hearing in the Supreme Court of South Carolina at the next or subsequent session thereof,

or as soon thereafter as counsel can be heard, the undersigned attorneys for respondents will move the court for an order striking out from the petition herein, on the ground that they are irrelevant or redundant and constitute no cause of action or part thereof, the following allegations of said petition, namely:

1. Strike out in Paragraph 1 of the petition the words "and has certain rights in the streets of the original City of Columbia."

2. Strike out in Paragraph 5 of the petition all of the allegations of said paragraph on page 3 of the petition after the word "obligations" on the fourth line of Paragraph 5.

3. Strike out in Paragraph 6 of the petition, lines 2 and 3, the words "for its alleged interests," and on lines 6, 7, 8, 9 and 10 of Paragraph 6 strike out the words after the word "franchise" and to the word "concede."

4. In Paragraph 7 of the petition, eighth line from the bottom of page 5 strike out all words after the word "that" to and including the word "even" on the fourth line from the bottom of page 5.

5. Strike out in Paragraph 9 after the word "community" in the second line thereof, down to and including the word "labors" in the fifth line from the top of page 7. Also strike out the thirteenth, fourteenth and fifteenth lines on page 7, and all the remainder of Paragraph 9 after the word "service" in the seventeenth line from the top of page 7.

[fol. 14] 6. Strike out in Paragraph 10 all the allegations thereof down to and including the word "indicated" in the eighth line of Paragraph 10.

Elliott & McLain, Attorneys for Respondents.
Columbia, S. C., August —, 1927.

IN SUPREME COURT OF SOUTH CAROLINA

RETURN AND ANSWER (MAIN CASE)

The respondents above named, reserving the right to insist upon their demurrer and motion to strike out hereto-

fore served, making return to the order to show cause and answering the petition herein:

1. Deny each and every allegation of said petition not hereinafter specifically admitted.

2. Admit the allegations of Paragraph 1 of the petition.

3. Admit with reference to the allegations of Paragraph 2, that both corporate defendants are corporations created and existing under the laws of South Carolina, that they have their principal places of business in Columbia, South Carolina, that the Power Company was chartered in July, 1924, with inter alia, the powers alleged, and that F. D. Campbell is General Manager of both defendant companies; but deny that said Power Company has a capital of Twenty Million Dollars, or that it acquired all the stock, or became merged with, or invested with all the rights and liabilities of Columbia Railway, Gas and Electric Company; and as to said allegations denied alleges that the total outstanding capital stock of Broad River Power Company, both common and preferred is only $8,138,400.00; that it did not acquire all the preferred stock of Columbia [fol. 15] Railway, Gas and Electric Company, that it is not now, nor was it ever, merged with said electric company, and that it did not become, nor is it now, invested with all the rights and liabilities of said electric company; and respondents further allege that under authority of law hereinafter set forth Columbia Railway, Gas and Electric Company did sell and convey, for valuable consideration, certain of its properties to Broad River Power Company, but that there has been no merger of said companies, and that they are still separate and distinct corporations.

4. With reference to the allegations of Paragraph 3, (all of which are denied except as hereinafter admitted), respondents allege that the corporate history of the charter rights and franchises of Columbia Railway, Gas and Electric Company is as follows:

Columbia Street Railway Company was incorporated by legislative charter granted in 1882, Acts of 1882, at page 877, with the following powers:

"Sec. 5. That the said Company shall have power to construct single or double railway tracks of such gauge as

they may elect, through any street or streets of the City of Columbia, as it may deem advisable for the accommodation of the public or the interest of the Company, and to extend the same five miles beyond the corporate limits of said city: Provided, That the said Company shall so construct said railways that they shall not obstruct the streets through which they pass, and that the Company shall be required, after laying said railways, to replace the portion of the streets over which they pass in good condition, and thereafter keep their railway in like good order; in consid- [fol. 16] eration of which the said Company shall have such exclusive right of way over said railway as may be necessary for the proper conduct of its business.

"Sec. 6. That said Company shall have power to transport passengers and freight in suitable and sufficient carriages and cars, at such rates as may be fixed in the by-laws of the same.

"Sec. 8. That this Act shall remmain in force and continue for the period of thirty years: Provided, That said Company begin to operate a railway in said city within five years."

Congaree Gas and Electric Company was incorporated by legislative charter granted in 1887, Acts of 1887, page 1103, with the following powers:

"Sec. 2. The said corporation shall have full power and authority to manufacture, make and sell gas, to be made of rosin, coal, oil, turpentine, or other material, and to furnish such quantities of gas as may be required in or near the City of Columbia, for lighting the streets, stores, manufactories and buildings there situate, and for heating and other purposes; to lay pipes or other conductors for conducting gas through the streets, alleys, lanes and squares of the City of Columbia aforesaid, or its vicinity; and the said corporation shall have full power and authority to carry on and conduct the business of using electricity for any purpose, and of manufacturing light, heat and power, or either or all of them, by electricity or any other agent or agents whatsoever, within the said State and to the inhabitants thereof, for lighting and heating the streets, roads, lanes, [fol. 17] alleys, avenues and public grounds of the several

cities, towns and villages thereof, and for lighting the stores, manufactories, residences and all other buildings therein, and steamboats, railroad cars, locomotives, or for other transportation or industrial purposes, and for such purposes to erect or lay all necessary poles, pipes and conductors, subject to proper municipal ordinance and restriction, and the supplying of power to carry on and conduct the business of dealing in dynamo-electric machines, voltaic arcs, and incandescent lamps, regulators, meters, and other apparatus, devices and appliances which may be used or applied in producing light or power by electricity or in connection therewith; and the said corporation shall have full power and authority to erect shops, works and such other buildings as may be necessary or desirable, and to purchase, take, hold, sell and convey in fee simple, or for less estate, any lands, tenements, or hereditaments, goods, chattels, rights and credits, which may be connected with or in any manner conducive to the purposes for which said company is established; to issue bond or bonds of the company, secured by mortgage or otherwise, in such amount or manner as the said corporation may determine.

"Sec. 3. The persons aforesaid shall have power to raise by subscription a capital stock for said corporation of Twenty-five Thousand Dollars, in one thousand shares of Twenty-five Dollars each: Provided, however, that a majority of the Board of Directors of said corporation shall have the power of increasing the said capital stock to any extent not exceeding One Million Dollars, whenever they [fol. 18] deem proper to do so; and the said corporation shall, by its by-laws or Board of Directors, provide for the manner of raising and distributing such additional capital stock.

"Sec. 4. That the duration of the charter hereby granted shall be for the term of thirty years and until the final adjournment of the General Assembly next thereafter."

"Sec. 5. That said corporation shall have, and is hereby vested with, all the powers, rights and privileges, and is hereby subject to all the liabilities and restrictions, contained in Section twenty-two of an Act entitled 'An Act to provide for the formation of certain corporations under

general laws,' approved December 23, 1886, except in so far as the said section of said Act, or any part thereof, is inconsistent with the provisions of this Act or any part thereof."

Columbia Electric Street and Suburban Railway and Electric Power Company was incorporated by legislative charter granted in 1890, Acts 1890, at page 969, with the following powers:

"Sec. 5. That the said company shall have power to construct or acquire single or double railway tracks, of such gauge as they may elect, through any street or streets of the City of Columbia, with consent of City Council, and to extend the same five miles into the country, in any direction or directions they may wish, from the State Capitol. And the said company is authorized and empowered to contract for and provide electric motor power for any other purpose or purposes.

"Sec. 6. That said company shall have power to operate [fol. 19] their cars in the transportation of pessengers and freight over the tracks they may construct or acquire, in said city, with electric power, in suitable carriages, and at such rates as may be fixed upon in the by-laws of the same.

"Sec. 8. That this Act shall remain in force and continue for the period of thirty years: Provided, that said company begins to operate its railway in said city within five years."

Thereafter in 1891, Statutes at Large for South Carolina for 1891, at page 1453, Columbia Electric Street Railway, Light and Power Company was incorporated by legislative charter, which said Act likewise authorized the purchase and consolidation into one company, viz.: Columbia Electric Street Railway, Light and Power Company, of the property, franchises, and privileges of the other three companies above mentioned, the pertinent portions of said Act being:

"Section 1. Be it enacted by the Senate and House of Representatives of the State of South Carolina, now met and sitting in general assembly, and by the authority of the same, That the 'Columbia Electric Street and Suburban

Railway and Electric Company' and the Congaree Gas and Electric Company be, and they hereby are, authorized to consolidate their property, franchises and privileges into one company, under the name of 'The Columbia Electric Street Railway, Light and Power Company,' such consolidation to be effected by a deed of indenture, to be executed by the two consolidating companies, declaring their intention so to consolidate, and transferring to said consolidated company all of the property, franchises, rights and privileges owned or held by each of them respectively.

[fol. 20] "Sec. 2. That upon such consolidation 'The Columbia Electric Street Railway, Light and Power Company' shall be vested with all the rights, franchise, powers and privileges conferred upon the consolidating companies by an Act entitled 'An Act to incorporate the Congaree Gas and Electric Company,' approved December 24, A. D. 1887, and by an Act entitled 'An Act to incorporate the Columbia Electric Street and Suburban Railway and Electric Power Company,' approved December 24, A. D. 1890, or any Acts amendatory thereof, and that said consolidated company be subject to all of the debts and liabilities of the two consolidating companies; and that said consolidated company be authorized and empowered to purchase and acquire the property, franchises, and privileges of 'The Columbia Street Railway Company,' and upon such purchase said consolidated company be vested with all the rights, powers, franchises, and privileges conferred by an Act entitled 'An Act to incorporate the Columbia Street Railway Company,' approved February 9th, A. D. 1882; but such purchase to be without prejudice to creditors of The Columbia Street Railway Company to enforce their rights against said Columbia Street Railway Company."

Thereafter in 1912 the name of Columbia Electric Street Railway, Light and Power Company was changed to Columbia Railway, Gas and Electric Company.

And further respondents allege that May 25th, 1896, Columbia and Eau Claire Electric Railway Company was granted a charter by the Secretary of State under the general laws applicable thereto, and that during the same year its properties were acquired, by deed duly recorded, by the predecessor of Columbia Railway, Gas and Electric Com-

[fol. 21] pany, which company was an innocent purchaser for value and without notice; that Suburban Transit Company was likewise chartered under the general law on November 1st, 1906, and its properties purchased by deed dated June 13th, 1912, by Columbia Railway, Gas and Electric Company, which was an innocent purchaser for value and without notice; that until a few months ago all the street railway lines of Columbia and Eau Claire Electric Railway Company lay entirely without the city limits of the City of Columbia, and are therefore unaffected by any city ordinances; that likewise all the lines of railway of Suburban Transit Company, except a few blocks, lie outside the city limits of the City of Columbia and are largely unaffected by City of Columbia ordinances.

5. With reference to the allegations of Paragraph 4 of the petition respondents allege upon information and belief, that neither Columbia Railway, Gas and Electric Company, nor any of its predecessors, obtained from the city council of Columbia its consent to furnish gas and electric service, but that said company, its predecessors or affiliates, proceeded to install such services and the necessary equipment under certain general police regulations of said city, applicable alike to all such utilities, violations of which were punishable by fine in the recorder's court of said city; that from time to time permission was granted by city council to Columbia Railway, Gas and Electric Company to lay single and double street railway tracks upon certain streets of the City of Columbia, all of which ordinances are embraced in Sections 579 to 620 inclusive of the Revised Ordinances of the City of Columbia, 1920, to which reference is craved, that said ordinances are not exclusive grants [fol. 22] to said Electric Company, but are specifically stated to be non-exclusive, and by their terms apply to all street railway companies, are entirely permissive, and in the nature of police regulations respecting speed of cars, kinds and types of cars, segregation of races, repair and upkeep of streets, headlights, heat in cars, etc.; and further that said ordinances by Section 585 thereof provide a penalty for failure to operate said cars, viz.: that in event of failure to operate said cars for a period of three months the corporate authorities of said City of Columbia may rent said street railway system at public outcry for a period of twelve

months, then, dismantle said road and sell the material to the highest bidder, and after deducting expenses and costs and charge for repairing streets, pay any balance to the legal representatives of said company. Respondents admit they built plants for the sale of gas and electricity and for the operation of street cars, and that in some instances, particularly on streets served by street cars, the same poles were used for carrying trolley and electric light wires, and that all three services, gas, electricity and street cars, were operated though not all owned by one company, but allege that said company always operated said services as three distinct and separate branches or departments, each department, to-wit: the gas department, the electric department, and the street railway department, having separate books for the allocation to each department of its proper operating expenses and revenue.

And in this connection respondents allege that the franchise or right to supply gas to the city and inhabitants of Columbia was not acquired by Columbia Railway, Gas and Electric Company, but that such right or franchise was granted to Columbia Gas Light Company, a corporation [fol. 23] chartered by legislative grant in 1852, Statutes at Large, Vol. 12, page 167, and that said Columbia Gas Light Company leased its properties upon certain terms to Columbia Railway, Gas and Electric Company, which latter company operated said gas properties under said lease until 15th June, 1925, when said Columbia Gas Light Company was acquired by Broad River Power Company.

6. With reference to the allegations of Paragraph 5 of the petition, respondents admit, that the properties of Columbia and Eau Claire Electric Street Railway Company and Suburban Transit Company were purchased as aforesaid, but deny that said companies, or either of them, were under any obligations to furnish street car service for any length of time, or that they had franchises from any municipalities except as to Suburban Transit Company, which was given certain privileges by the City of Columbia over four or five blocks of Bull Street in said city; respondents also admit that a contract of the general nature of that alleged was entered into with Columbia Land and Investment Company, but with reference thereto alleges that said

contract has been superceded and performed according to its terms by a purchase of said properties covered by said alleged contract or lease, admit that a contract was entered into with North Columbia Land Company, but deny said contract was in perpetuity; admit that a certain conditional contract was entered into with Shandon Annex Company, now in bankruptcy, but alleges that the conditions to be performed by said Shandon Annex Company according to the terms of said contract have never been performed, and that said contract therefore has never taken effect and is null and void; deny that said contracts were intended to [fol. 24] inure to the benefit of the public, and with reference to the allegation that purchasers purchased property on the faith of perpetual street car operation, allege that said street car lines were built in the faith that said purchasers of lots would patronize said street cars sufficiently to make same self supporting, which faith, however, has been blasted as will hereinafter be shown.

7. Answering Paragraph 6 of the petition respondents admit that Columbia Railway, Gas and Electric Company conveyed on 15th June, 1925, to Broad River Power Company all its property except its property and rights comprising its street railway department, for valuable and fair consideration; alleges that after said transfer said Columbia Railway, Gas and Electric Company was in better financial position according to its books than prior to such transfer, and would have grown and prospered had its street railway properties earned through public patronage a fair return on investment, but denies all the other allegations of said paragraph.

8. Respondents deny specifically the allegations of Paragraph 7 of the petition, and with reference thereto allege that said transfers were made and carried out in exact accord with said alleged Merger Act, which is as follows:

"An Act to authorize Columbia Railway, Gas & Electric Company, Parr Shoals Power Company, Columbia Gas Light Company, South Carolina Power Company, Saluda Manufacturing Company, Central Carolina Power Company and Public Service Company of South Carolina, or any of them, to merge, consolidate or sell, transfer and

convey all or any part of their respective properties, as-
[fol. 25] sets, franchises and charter or other rights to any one or more of them or to Broad River Power Company, a corporation of the State of South Carolina, and to authorize the Broad River Power Company or any one or more of them to merge, consolidate or purchase the same and to vest in said Broad River Power Company or any other of said companies the property, assets, franchises and charter or other rights so sold, transferred, conveyed, merged, consolidated, or purchased, and to validate the same.

"Section 1. Merger of Certain Corporations Authorized.—Be it enacted by the General Assembly of the State of South Carolina; That Columbia Railway, Gas and Electric Company, Parr Shoals Power Company, Columbia Gas Light Company, South Carolina Power Company, Saluda Manufacturing Company, Central Carolina Power Company, and Public Service Company of South Carolina, all of which last named six companies are owned or controlled by Columbia Railway, Gas and Electric Company, or any one or more of them, be, and they hereby are, and each of them is authorized to merge or consolidate with or to sell, transfer and convey to any one or more of them or to the Broad River Power Company all or any part of their respective properties, assets, franchises, and charter or other rights, and each and every of said companies and the Broad River Power Company are hereby authorized to merge or consolidate with or to purchase and to receive and hold all or any part of the properties, assets, franchises and charter or other rights of any other of said companies so sold, transferred and conveyed to it, any such [fol. 26] merger, consolidation or purchase and sale to be authorized by seventy-five (75) per cent in interest of the stockholders of the respective companies merging, consolidating, selling, transferring and conveying any such property and rights and of the company receiving the same, and each and every company so merging or consolidating with or becoming the purchaser of any of such property, assets, franchises and charter or other rights is hereby declared to be vested with the same and all such mergers, consolidations, sales, transfers and conveyances are hereby

validated and confirmed: Provided, that all such mergers, consolidations, sales, transfers and conveyances shall be made without prejudice to any claim for taxes or any rights of any creditors of the companies so selling."

"Section 2. Franchises.—That in furtherance of the purposes of Section 1 of this Act, it is hereby declared that all franchises heretofore granted tby the State to any of the said companies may be transferred and assigned in pursuance of the provisions of Section 1 of this Act, and that said franchises are hereby ratified, confirmed and continued in full force and effect in the company, to which the same shall be so transferred and assigned and that such company shall hold the same with all the rights, powers and privileges granted to the original holder thereof, subject only to the restrictions, requirements and conditions in said franchises contained."

"Section 3. All Acts or parts of Acts inconsistent with this Act are hereby repealed."

[fol. 27] "Section 4. Fees.—This Act shall take effect upon the payment to the proper officers of an amount of fees which shall be equal to the dissolution fees of the merged corporations and charter fees of new corporations, if the merged corporations were dissolved by the Secretary of State and the new company chartered by the Secretary of State."

"Approved the 19th day of March, A. D. 1925."

And further the respondents alleged that said Merger Act was a part of the contract with the State of South Carolina for settlement of the controversy between said State and Columbia Railway, Gas and Electric Company concerning the Columbia Canal, and that said Act was passed through the General Assembly as a part and one of the considerations for the contract settling the Canal controversy and for the purpose of enabling Columbia Railway, Gas and Electric Company to carry out its obligations to the State as set forth in said Canal Settlement Contract, that said Act was introduced in the General Assembly of South Carolina by the Canal Commission, or members thereof, and said Commission procured its pas-

sage as a part of said Canal Settlement Contract; that said Act is clear and precise and its purpose, to-wit: to separate the street railway property from other property of Columbia Railway, Gas and Electric Company was fully and frankly disclosed to said Canal Commission and to such members of the General Assembly as saw fit to make inquiry as to its purpose, that without such Act it would have been impossible to have financed the important improvements which have been made for the increase of power in Columbia and vicinity, and which were agreed to be made as a part of said canal settlement; and that if [fol. 28] said Act be null ad void then the whole of said canal settlement and the Act carrying same into effect are likewise null and void, a part of the consideration therefor having failed.

9. Respondents deny the allegations of Paragraph 8 of the petition except the allegation that in March, 1927, street car service was completely discontinued, and the allegation that Broad River Power Company has and does exercise the franchise for gas, electricity and power; and with reference thereto alleges that all street car service except that furnished on two lines by five or six street cars was discontinued about July 1st, 1926, by order of the Railroad Commission of South Carolina because said discontinued service and lines were not making operating expenses.

10. Deny all properly pled allegations of Paragraph 9 of the petition except the allegations that certain citizens and the Towns of Eau Claire and Arden have protested and that city council has passed a resolution favoring restoration of street car service, which said allegations though immaterial and irrelevant are admitted, and with respect thereto allege that citizens of Eau Claire and Arden and of the City of Columbia fail and have failed to patronize said street cars in sufficient numbers to enable said street car company to pay operating expenses, and that city council of Columbia, since March, 1922, has by action and inaction permitted competition by jitneys with street cars to such extent as to make it financially impossible for any street car company to provide any sort of street car service.

[fol. 29] 11. Deny the allegations of Paragraph 10 of the petition.

12. And further answering the petition and by way of further return to the order to show cause herein, respondents respectfully represent and show to this Court:

That since about 1890 Columbia Railway, Gas and Electric Company and its predecessors have been engaged, inter alia, in furnishing transportation service to Columbia and its suburbs, and from that time through the period of the late World War diligently and faithfully by making additions and betterments, served the City of Columbia, and its environs; that the original cost of plaintiff's street railway system has been appraised by competent appraisal engineers at over $2,000,000.00; that respondents are informed and believe that Columbia Railway, Gas and Electric Company and its predecessors never earned a fair return upon its property devoted to street railway purposes; that in March, 1922, there occurred a strike of motormen and conductors which was not settled, and thereupon the city council of the City of Columbia licensed a large number of jitneys, which in varying numbers have ever since been permitted unrestricted competition with street cars; that Columbia Railway, Gas and Electric Company has suffered deficits in operating revenue exclusive of any return on investment, interest or depreciation, in the following amounts for the years 1922 to and including January and February, 1927:

Losses for Each Year

1922	$144,513.21
1923	102,477.28
1924	138,047.05
1925	87,812.13
[fol. 30] 1926	47,630.35
January, 1927	5,610.79
February, 1927	5,342.29

The decreasing losses during the above period are attributable, not to any increase of patronage, but to efficiency of operation, relief from taxes, curtailment of service and abandonment of lines. That Columbia Railway, Gas and

Electric Company has of late years been unable to provide for depreciation of its street railway system, and as a consequence its property is now worth less than $100,000.00; that it has no assets except the depreciated street railway properties and less than $1,500.00 in bank, and is unable to borrow money from any known source.

That beginning about 1922, on account of private automobile lack of patronage, and the unlimited, unregulated, and unrestricted competition permitted by the city council of the City of Columbia, Columbia Railway, Gas and Electric Company was forced to curtail its service, and from time to time discontinue various unprofitable lines; that all such curtailments and discontinuances were effected with the consent and approval of the Railroad Commission of South Carolina; that on March 11th, 1927, when Columbia Railway, Gas and Electric Company discontinued all street car service only five or six cars were being operated on two of its lines, all other lines and service having been discontinued.

13. That Broad River Power Company since its organization in 1924 has spent more than Seven and One-half Million Dollars in providing a large steam station at Parr Shoals, in reconstructing and building transmission lines, [fol. 31] and in making betterments and improvements so as to furnish Columbia and its trade area with an abundance of electric power, and to provide more efficient gas and electric service at rates which are attractive to industries; that in order to finance said additions, improvements and betterments said Broad River Power Company has sold to the public more than Eight Million Dollars of common and preferred stocks, and has mortgaged and bonded its properties for approximately Seven Million Dollars; that all such stocks and bonds have been sold in reliance upon the faith and credit of the State of South Carolina and upon the validity of the so called Merger Act, and the separation thereunder of the street railway from the other public service properties in and around Columbia; that Broad River Power Company is not earning a fair return upon its investment and properties used and useful in the public service; that its earnings have not been sufficient to charge off any depreciation; that if it were compelled to take over

and operate the street car system as prayed for in the petition it would be necessary to entirely rehabilitate the entire system at a cost of more than One Million Dollars, and that the operation of such system would entail a yearly loss of in excess of One Hundred Thousand Dollars, not taking into account, interest, depreciation or any return whatsoever upon investment; that as respondents are informed and believe it has been held by the Public Service Commission of South Carolina and is settled law, that each department of a public utility must stand or fall upon its own earnings, and that it is illegal to increase rates for gas and electricity or both to make up for deficits caused by the operation of [fol. 32] street cars; that on account of the foregoing it is impossible for Broad River Power Company to finance the rehabilitation and operation of a street car system in Columbia, and that it is likewise impossible to float bonds on properties among which is a street railway system having annual losses such as have been experienced by the street railway system of Columbia.

14. And respondents further show that it would require from three to six months, even if funds could be procured, to rehabilitate the street railway system so as to operate same without the gravest danger to the patrons and operators of street cars of loss of life and limb.

15. And respondents respectfully show further, that Columbia Railway, Gas and Electric Company is willing, and hereby offers to, surrender its charter for the operation of street cars, and to return and deliver same to the State of South Carolina, and or to the City of Columbia, and further that if it should be held and determined that the several ordinances of the City of Columbia constitute a contract, that Columbia Railway, Gas and Electric Company specifically sets up and claims the benefits of the penalty for non-operation provided in said ordinances.

16. And respondents show also that the enforcement of any order requiring a restoration of street car service either in whole or in part would amount to a confiscation and an entire taking of respondents' property without compensation and without due process of law in violation of Sections 5 and 17 of Article 1 of the Constitution of South Carolina, 1895, and of the Fourteenth Amendment to the

Constitution of the United States, which said provisions of both constitutions respondents specifically set up and claim [fol. 33] the protection of.

17. And further respondents show that prior to July, 1926, at various times, all lines and street car service, except the two lines in operation on March 11th, 1927, were ordered or permitted by order of the Railroad Commission of South Carolina to be discontinued, that such orders were passed after hearings held in accordance with law, that no petitions for rehearings were asked or granted, and that no appeals have been taken from any of said orders although more than one year has elapsed, and respondents are informed and believe that said orders have become final and conclusive on all parties and on the public and that same are now res judicata.

18. And respondents finally show that under the constitution and laws of South Carolina the matter of regulating the service of all public utilities, including the corporate respondents herein, has been duly delegated to the Railroad Commission of South Carolina, that with respect to the operation of street cars in Columbia that matter was pending before the Railroad Commission of South Carolina from March 18th, 1927, until July 29th, 1927, that after numerous hearings, rehearings and arguments, and after said Commission had passed an order permitting respondents to discontinue entirely their street railway service, that another hearing was had on petition of the relator herein which resulted in an order of said Railroad Commission requiring a restoration of street car service on the two lines leading into Ridgewood, Eau Claire, Arden and North Columbia; that the validity of said order of restoration is now pending in the United States District Court for the Eastern District of South Carolina, in which court Columbia Railway, Gas [fol. 34] and Electric Company has filed its Bill of Complaint praying that said order of the Railroad Commission be adjudged to be null and void in violation of the constitutional rights of said railway company, for all of which reasons respondents say that this Court should properly hold that it is without jurisdiction in the premises, and that relators have a full, complete and efficient remedy by an ordinary action at law to enforce, if valid, the said order of the Railroad Commission.

Wherefore, having made return and full answer, respondents pray that the order to show cause be vacated and the petition dismissed; for such other and further relief as may be just, and for the costs of this action.

Elliott & McLain, Attorneys for Respondents.

(Duly verified by F. D. Campbell.)

IN SUPREME COURT OF SOUTH CAROLINA

REPLY TO RETURN AND ANSWER (MAIN CASE)

The petitioner the State of South Carolina replying to the respondents' return herein:

1. Denies on information and belief each and every allegation in the said return contained inconsistent with the allegations of the main petition herein, except as hereinafter expressly admitted.

2. Replying particularly to Paragraph 4 of the said return, this petitioner admits that the portions of the Acts therein referred to appear to be set out correctly in the said return, but prays reference to the official printed records containing such statutes for the exact terms thereof.

With reference to the allegations as to the purchase by respondents and merger with the Columbia and Eau Claire [fol. 35] Electric Railway Company contained in the return at pages 6 and 7, this petitioner alleges that property and rights of way had been contributed to the said Columbia and Eau Claire Electric Railway Company, subject to the provision that the said Electric Railway Company should operate and maintain its street car service along such line, and that such deeds and grants or many of them were duly recorded in the office of the Clerk of Court for Richland County, and that the said Columbia Electric Street Railway, Light and Power Company (now Columbia Railway, Gas & Electric Company) acquired the said property and rights subject to the obligation for the continued operation of the street car service, and further that the said Columbia Electric Street Railway, Light & Power Company acquired all the assets and became merged with and charged with all

the liabilities of the said Columbia and Eau Claire Electric Railway Company.

Petitioner further alleges that substantially the same facts and circumstances existed and occurred with reference to the purchase and merger of the Suburban Transit Company by and with the said Columbia Railway, Gas & Electric Company in 1912; and the said respondent company was and is in no sense an innocent purchaser for value of the assets of either of the said companies.

3. Replying particularly to the allegations of Paragraph 5 petitioner expressly alleges that it was the plain intent and purpose of the City in granting the right to operate along its streets, as embodied and expressed in its Ordinances, that the said Street Railway Company should proceed to operate and continue to operate the said street car service in the City of Columbia during the fifty year term [fol. 36] of its charter, and in perpetuity as expressed in its charter as amended, subject to City Ordinances regulating the operation of the street cars; and that the said Ordinances and the acceptance of and operation under the same by the Street Car Company constituted a contract between the City and the said Railway Company, enforcible in any and every way provided by the law for the enforcement of such contracts; and that the particular and specific penalty originally provided for and applicable to the old Columbia Street Railway Company (which operated a horse street car system) was not the sole or exclusive remedy for the breach of the said contract by the Columbia Electric Street Railway, Light and Power Company (now Columbia Railway, Gas & Electric Company) which also enjoyed the franchises for gas, light and power.

4. Replying to Paragraph 8, particularly to as much thereof as alleges that the Merger Act was a part of a contract with the State of South Carolina in the settlement of the controversy between the State and the Columbia Railway, Gas & Electric Company concerning the Columbia Canal, petitioner alleges on information and belief that the members of the Canal Commission did not have and did not purport to have authority or power relative to the separation of the services and franchises of the Columbia Railway, Gas & Electric Company, as appears from the Act

creating said Canal Commission; that the said Canal Commission did not approve or sanction or undertake to approve or sanction the separation of the franchises of the said Railway, Gas & Electric Company, or the discontinuance of its street car service and that the said Canal [fol. 37] Commission did not give and did not purport to give its sanction to, or approval of, the said Act; and that moreover the said Act does not purport to authorize the discontinuance of the street car service or the release of respondent companies from the obligation to operate the same but if intended to authorize the separation of the street car service from the other services and the discontinuance of the street car service, was illegal and unconstitutional, and beyond the powers of the Legislature—all of which was well known to the said respondent companies.

5. Replying to the allegations of fact contained in Paragraph 12 and reserving the right to show that as a matter of law such alleged losses, even if proven, do not constitute any defense to respondents obligation to operate the street car service, petitioner alleges that such book losses if actually shown by the books of the respondent companies are due to and caused by improper and unjustifiable allocation of costs and operating expenses, to excessive charges for electricity and power for the operation of said street cars, to excessive salaries of officers and overhead expenses of the said companies, and to failure to properly report and credit all receipts of the street car department; and further that such apparent losses, if any, are due particularly to the fact that respondent companies during the past few years have failed and refused to give or maintain adequate street car service, such as was calculated to invite patronage, but on the contrary the said respondent companies by giving inadequate and unsatisfactory service appeared to and did deliberately invite competition and discourage patronage; and on information and belief, petitioner denies the reality and necessity of the said alleged [fol. 38] losses and on the contrary alleges that the said street railway system if administered efficiently in an honest effort to make the same pay, and serve the public properly, could be made to and would yield a fair return on the investment; and further that the income of the respondent companies from the operation of its various franchise rights

and privileges including power, electricity and gas, will now show a fair return on their capital stock and investment.

And further replying to the claim that the assets of the Columbia Railway, Gas & Electric Company are now worth less than $100,000.00 and also to the allegations of Paragraph 13, petitioner alleges that if such be the fact, such condition is due to the action of the said Columbia Railway, Gas and Electric Company in deliberately allowing its property to become depreciated, and further to its action in deliberately transferring all the bulk of its assets to the respondent Broad River Power Company without adequate or proper consideration, and that the said Broad River Power Company now has and holds assets which it acquired from the said Columbia Railway, Gas & Electric Company worth many millions of dollars, and is amply able financially to restore street car service; that moreover the said Broad River Power Company acquired the stock in and assets of Columbia Railway, Gas & Electric Co., with full knowledge of the conditions and obligations of the said Columbia Railway, Gas & Electric Company and is therefore liable for and bound by all such obligations and particularly the obligation to continue the operation of the street car seryice.

6. Replying to Paragraphs 17 and 18 petitioner calls attention to the Acts of the Legislature regulating and creating the powers of the Railroad Commission, and particu- [fol. 39] larly to so much thereof as show that all actions of the Railroad Commission are subject to be rescinded, modified or changed as to the said Railroad Commission may appear proper, and further that the said Commission has no authority or power to modify or abrogate the contractual obligations of the said respondents or to relieve the said companies of their obligation to operate the street car service in accordance with the contracts with the City of Columbia and with others mentioned herein as recognized by the Railroad Commission in its Order No. 356 directed to the respondents herein on July 28th, 1927.

Further with reference to the suit instituted by the said Columbia Railway, Gas & Electric Company in the United States District Court, petitioner alleges and shows that said suit was instituted after the commencement of this proceeding, for the purpose as petitioner is informed and believes, of attempting to oust this Court of its jurisdiction,

was wholly useless and unnecessary and vexatious, and premature, that respondents would have full opportunity to set up and protect any and every right which they might have in this proceeding, all of which will appear by comparison of the pleadings in said suit with the record in this proceeding.

Wherefore petitioner prays that the said return be dismissed and that the prayer of the petitioner herein be granted.

John M. Daniel, Attorney-General; Cordie Page, Assistant Attorney-General; Melton & Belser, H. N. Edmunds, Attorneys for Petitioner.

Columbia, S. C., 18 August, 1927.
(Duly verified by John M. Daniel.)

[fol. 40] In Supreme Court of South Carolina

General Order Allowing Intervention

Upon application of the attorneys representing various parties who desire to intervene and join in this proceeding, and by and with the consent of the attorneys representing the State of South Carolina, petitioner above named,

It is hereby ordered and adjudged that all persons, municipalities or corporations who desire to be made parties to this proceeding may, with the consent of the attorneys for the petitioner, join and intervene in this proceeding and file their petitions herein and be made parties to this proceeding, provided that such petitions of such intervening parties be served upon the respondents, who shall have ten days thereafter within which to file their return thereto if they be so advised, and that such intervening petitioner shall after the service of such return have five days within which to file a reply to the said return, if they be so advised.

R. C. Watts, Chief Justice.

A true copy. J. B. Westbrook, Clerk of the Supreme Court. Columbia, S. C., 3 August, 1927.

IN SUPREME COURT OF SOUTH CAROLINA

NOTICE OF MOTION TO VACATE AND REMAND

To Honorable John M. Daniel, Attorney-General; Honorable Cordie Page, Assistant Attorney-General; Messrs. Melton & Belser, Honorable H. N. Edmunds, attorneys for petitioner:

[fol. 41] You will please take notice that on October 10, 1927, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, the respondents above named will move the Supreme Court of South Carolina, in the Supreme Court room at Columbia, to vacate the following orders issued in this cause:

1. The order of Honorable R. C. Watts, Chief Justice, dated August 3, 1927, whereby it is ordered and adjudged that all persons, municipalities or corporations may intervene in this cause.

2. The order of Honorable R. C. Watts, Chief Justice, dated August 3, 1927, allowing Dr. W. B. Burney to intervene in this cause.

3. The order of Honorable R. C. Watts, Chief Justice, dated August 3, 1927, allowing Columbia College to intervene in this cause.

4. The order of Honorable R. C. Watts, Chief Justice, dated August 3, 1927, allowing the Town of Eau Claire to intervene in this cause.

5. The order of Honorable R. C. Watts, Chief Justice, dated August 3, 1927, allowing the Town of Arden to intervene in this cause.

6. The order of Honorable Eugene S. Blease, Associate Justice, dated September 7, 1927, allowing the Railroad Commission to intervene in this cause.

And will further move that all of the intervention petitions filed under the authority of such orders shall be stricken out.

Such motion to be made on the record in the cause, on the ground that all of such orders prejudicially affect and undertake to adjudicate material rights of the respondents

herein and that the same were issued ex parte and without [fol. 42] notice or hearing accorded to respondents.

And respondents will further move the Court to remand this cause to the Court of Common Pleas for Richland County for further proceedings therein according to law, and without prejudice to the rights of any of the parties thereto, upon the grounds:

1. That the moving papers do not show that the public interests are involved or that special grounds of emergency or other good reasons exist the original jurisdiction of this Court should be exercised, as provided in Rule 20 of this Court.

2. That this Court has not the time nor the machinery to try this cause without substantial prejudice to the rights of respondents.

3. That, should a writ of mandamus be issued, requiring street railway service as prayed for in the petition, the same would involve the supervision of such street railway service in multitudinous details and necessitate the application to the Court of the various parties interested for the adjudication and disposition of such details, so that this Court would not have the time and machinery to properly supervise the enforcement of such order.

Elliott & McLain, J. B. S. Lyles, Attorneys for Respondents.

Columbia, S. C., September 22, 1927.

IN SUPREME COURT OF SOUTH CAROLINA

NOTICE OF MOTION TO STRIKE OUT RETURNS AND DEMURRERS

To Messrs. Elliott & McLain and J. B. S. Lyles, attorneys for the respondents:

[fol. 43] You will please take notice that the undersigned attorneys on behalf of the State of South Carolino and of the various intervening petitioners herein will move before the Supreme Court at the opening of Court on Monday, October 10, 1927, at ten o'clock A. M., or as soon thereafter as counsel can be heard, for an order striking out the

several returns and demurrers filed herein by the respondents and giving judgment thereon in favor of the petitioners, upon the ground that the same are sham and irrelevant, dilatory and frivolous and do not constitute a defense herein, in that:

1. The said returns and demurrers, in so far as they question the force and effect of the charter obligations of respondents and of the several contracts with the State of South Carolina, the City of Columbia, the Columbia Land and Investment Company, the Shandon Annex Company, Dr. W. B. Burney and the North Columbia Land Company and others, are sham and irrelevant and false and frivolous, and

2. In so far as the said returns contend that the respondents can operate the said street car service only at a loss, such alleged loss, even if conceded, does not constitute a defense to the contractual obligation of respondents to operate such street car service, and said alleged facts fail to constitute a defense and the said return is sham and frivolous.

The said motion will be based upon the pleadings herein, upon the statutes creating and affecting the respondent companies and upon their charters and amendments thereto, upon the ordinances of the City of Columbia, upon the original contracts by and between the said respondent companies and the Columbia Land and Investment Company, [fol. 44] the North Columbia Land Company, Shandon Annex Company and Dr. W. B. Burney, upon the contract with the State of South Carolina, as set forth in Senate Journal 1925 at page 111, and upon the record of the proceedings in the hearing before the Railroad Commission of South Carolina.

In the alternative a motion will be made to refer the following issues to some suitable court or referee to be reported back to the Court at the November Term of Court, to wit:

1. Is the respondent Columbia Railway, Gas & Electric Company under contractual obligations inuring to the benefit of the public to operate street car service in the City of Columbia and its environs?

2. Is the Broad River Power Company subject to and bound by the obligations, if any, of the Columbia Railway, Gas & Electric Company to operate the street car service in the City of Columbia and its environs?

3. Is it possible for the respondents, or either of them, to operate their various public service so as to yield a fair return upon their total investment, or to so operate the street car service as to yield a fair return upon the alleged street car department? (This issue to be submitted only if desired by respondents.)

John M. Daniel, Attorney-General; Cordie Page, Asst. Attorney-General; Melton & Belser, H. N. Edmunds, Nelson & Mullins, Colin S. Monteith, C. T. Graydon, Attorneys for Various Petitioners.

Columbia, S. C., October 5, 1927.

[fol. 45] In Supreme Court of South Carolina

Return to Motion to Strike Out Returns and Demurrers

The respondents above named, making return to the motion of the petitioners to strike out the returns and demurrers to the petitions herein as sham and frivolous, respectfully allege:

1. That it is the settled practice of this court not to look upon a motion to strike out a pleading or defense as sham or frivolous with favor, and the motion should not be granted unless its character as such clearly appears, since the truth or falsity of a pleading is ordinarily to be determined on a trial on the merits, with full opportunity for producing, examining and cross-examining witnesses.

(Germofert Co. v. Castles, 97 S. C., 389.)

2. That an answer to be adjudged frivolous must be clearly so. If argument is required to establish that character, the court will not dispose of it in this summary manner.

(Boylston v. Crews, 2 S. C. 422; Manufacturers Finance Co. v. Boyd, 128 S. C., 339, 122 S. E., 496.)

3. That the court has no power to strike out as sham an answer consisting of a general denial of the material allegations of the complaint,

(Ransom v. Anderson, 9 S. C., 438.)

or an answer containing a denial of any material allegation in the comp-aint.

(Standard Sewing Mach. Co. v. Henry, 43 S. C. 17.)

4. That the respondents have set up the defense that to grant the relief prayed for would constitute a taking of property without due process of law in violation of sections [fol. 46] 5 and 17 of Article 1 of the Constitution of South Carolina and the Fourteenth Amendment of the United States Constitution, and are entitled to a hearing at which they shall be given an opportunity to produce evidence in support of said defense.

5. That to depart from the settled course of procedure and rules of practice above stated would of itself constitute a deprivation of the property of the respondents without due process of law in violation of the Fourteenth Amendment of the United States Constitution.

Wherefore the respondents pray that said motion be denied.

Elliott & McLain, J. B. S. Lyles, Attorneys for Respondents.

Dated Otober 10th, 1927.

IN SUPREME COURT OF SOUTH CAROLINA

NOTICE TO PRODUCE

To Messrs. Elliott & McLain and J. B. S. Lyles, Attorneys for the respondents:

Please take notice that upon the call of the above entitled case in the Supreme Court on Monday, October 10, 1927, you will be called upon to produce the originals of the following letters, contracts and documents:

1. Contract by and between the Columbia Electric Street Railway, Light and Power Company and Columbia Land and Investment Company dated October 23, 1902.

2. Contract by and between the Columbia Electric Street Railway, Light and Power Company and North Columbia Land Company, dated August 24, 1906, together with amend-
[fol. 47] ment thereto dated — day of May, 1908.

Upon your failure to produce the same, application will be made to the Court for an order requiring respondents herein to produce the originals thereof for the inspection of the Court and for use in this case, and pending the production of the originals secondary evidence of the contents thereof will be offered on behalf of the petitioner herein.

John M. Daniel, Attorney-General. Cordie Page, Asst. Attorney-General. Melton & Belser, H. N. Edmunds, Attorneys for Petitioner.

Columbia, S. C., October 7, 1927.

IN SUPREME COURT OF SOUTH CAROLINA

NOTICE AND AFFIDAVIT ON MOTION TO STRIKE OUT

To Honorable John M. Daniel, Attorney-General, and Messrs. Melton and Belser:

You will please take notice that respondents above named in support of their motions to have certain allegations in the main petition with reference to Columbia Land and Investment Company stricken out will present to the court affiavits of Mr. William H. Lyles and Mr. W. M. Shand, copies of which are hereto attached.

Elliott & McLain, J. B. S. Lyles, Attorneys for Respondents.

Columbia, S. C., September 29th, 1927.

[fol. 48] STATE OF SOUTH CAROLINA,
County of Richland:

Affidavit

Personally appeared William H. Lyles, who, on oath, says that he is now and has been for a number of years

President, and a member of the firm of Lyles and Lyles, Attorneys for the Columbia Land and Investment Company. That he and Mr. W. M. Shand are now, and for a number of years have been, the only officers of said Columbia Land and Investment Company. That he has read the affidavit of Mr. W. M. Shand dated September 29th, 1927, and fully concurs in all statements therein made.

Deponent further says that he has not authorized anyone to represent said Company, or to set up its claims, if it has any, in the above entitled case, or in any other case, and deponent further says that the statements in the affidavit of Mr. W. M. Shand as to the contracts, lease and deed between said Company and Columbia Railway, Gas and Electric Company are true.

(Sd.) Wm. H. Lyles, (Probated.)

STATE OF SOUTH CAROLINA,
County of Richland:

Affidavit

Personally appeared William M. Shand, who, being duly sworn, says that he is now and for a number of years has been Secretary and Treasurer of Columbia Land and Investment Company, and that said Company has not authorized anyone to represent it, or to set up its claims, if it has any, in the above entitled case or in any other case, and deponent further says that Columbia Land and Investment [fol. 49] Company beginning as early as 1894 entered into several contracts with Columbia Railway, Gas and Electric Company by its then name, and that thereafter on the 6th of September, 1902, the Columbia Land and Investment Company entered into a lease for a period of ninety-nine years whereby it leased to Columbia Electric Street Railway, Light and Power Company a certain line of street railway through the then town of Shandon known as "The Shandon Line;" that among other provisions the said lease provided as follows:

"It is further, however, covenanted and agreed that the party of the second part hereto may, at any time, during the continuance of this lease, exercise the option of purchasing the said line at the price of Seven Thousand Four Hundred and Nine and 57/100 ($7,409.57) Dollars, with

interest thereon from the last rental day, it being the purpose that such interest is to be chargeable in case the option of purchasing the line is exercised by the party of the second part between the days of the semi-annual payments, and only to cover such time as may not be covered by the rentals paid, such price to be paid in cash to the party of the first part or its assigns."

That in pursuance of the said lease and of the above quoted provision thereof Columbia Land and Investment Company did subsequently on the 30th day of June, 1909, sell and convey to the said Columbia Electric Street Railway, Light and Power Company the said line of railway covered by the said lease by a deed in fee simple with the general warranty, said deed having been duly recorded in the office of [fol. 50] the Clerk of Court for Richland County in deed book "AU," at page 47, on July 1st, 1909.

(Sd.) Wm. Shand, (Probated).

IN SUPREME COURT OF SOUTH CAROLINA

ORDER STAYING PROCEEDINGS

Upon considering the attached petition and it appearing that the Order of the Railroad Commission therein mentioned No. 356 should be and can be properly enforced by mandamus proceedings upon application of the Commissioners, as provided in Section 4888 of the Code of 1922, and that the service directed under the said Order is embraced within the object of this proceeding, and that the said Commission has no intention of enforcing such Order except through this proceeding, now upon motion of the Attorneys for the Petitioner, and with the consent of the Attorney-General and of the Attorneys for the State of South Carolina herein,

It is hereby

Ordered, adjudged and decreed that all further or other proceedings under said Order No. 356 of the Railroad Commission or for the enforcement thereof by any persons whatsoever, except in and through this proceeding, be and they hereby are stayed pending the final determination of this suit by this Court.

Let a copy of this Order and of the petition be filed in the United States District Court for the Eastern District of South Carolina, and be served upon the Attorneys for the respondents, who shall have ten days after such service [fol. 51] within which to file a return to the petition if they be so advised, in accordance with the provisions of the Order of this Court herein.

Eugene S. Blease, Justice of the Supreme Court.

Newberry, S. C., Sept. 7, 1927.

We consent: John M. Daniel, Attorney-General. Cordie Page, Asst. Attorney-General. Melton & Belser, H. N. Edmunds, Attys. for the State of S. C.

A true copy. J. B. Westbrook, Clerk Supreme Court.

IN SUPREME COURT OF SOUTH CAROLINA

INTERVENTION PETITION OF RAILROAD COMMISSION

To the Honorable Supreme Court of South Carolina:

This petition of your Petitioners as the Railroad Commission of South Carolina, intervening in this proceeding, respectfully shows to the Court:

1. That since the institution of the above entitled proceeding your Petitioners as the Railroad Commission of the State of South Carolina, have duly handed down their Order dated on the 28th of July, 1927, and served on the 29th day of July, 1927, directing respondents herein to resume and restore street car service over its lines in the City of Columbia and environs within twenty days from date, as provided in its said Order No. 356; the reasons upon which the same is based being set forth in the opinion [fol. 52] of the majority of the Commission, copies of which are herewith presented to the Court and made a part of this petition.

2. That more than twenty days have elapsed since the service of the said Order No. 356 but that respondents have willfully failed and refused to carry out the said Order of

your petitioners, and have publicly announced that they have no intention of carrying out the said Order, and it has become and is necessary to have the said Order enforced as provided by law.

3. That your petitioners are advised and believe that the service directed to be restored under its said Order No. 356, is embraced within the object and the prayer of this proceeding; that the said Order was appropriate to the question before the Commission at the time, and was not intended to be and is not a final decision by the Commission as to the extent of the service which should be restored, and that as your petitioners are advised and believe, the said Order can be and should be, for the purpose of avoiding a multiplicity of suits, properly enforced by the Order of this Honorable Court in this proceeding.

4. That your petitioners, as well as the Attorney-General of the State, have no intention or purpose to enforce such order except in this proceeding, and in so far as the same may be in conformity with and embraced within the final order of this Court, and have filed a return to such effect in a certain case instituted by respondents on the 1st day of August, 1927, in the United States District Court for the Eastern District of South Carolina, for the purpose of restraining the enforcement of the said order, as will more fully appear by reference to the record in the case of the Columbia Railway, Gas and Electric Company against Sam [fol. 53] C. Blease, et al., now pending in the said United States District Court.

5. That under these circumstances your petitioners are informed and believe that the said Order No. 356 of the Railroad Commission, so far as the same may be appropriate, should be enforced in and through this proceeding, and that all further proceedings under such order should be stayed by this Honorable Court pending the final determination of this suit.

Wherefore your petitioners pray that the said Order No. 356 of the Railroad Commission be enforced in and through this proceeding as hereinabove set forth, and that all further proceedings under such order should be stayed by this

Court pending the determination of this suit; and for such other and further relief as may be just and proper.

John M. Daniel, Attorney-General. Cordie Page, Asst. Attorney-General. Melton & Belser, and H. N. Edmunds, Attys. for Petitioners. Sam C. Blease, Chairman Railroad Commission.

(Duly verified by Sam C. Blease.)

IN SUPREME COURT OF SOUTH CAROLINA

NOTICE OF MOTION AND DEMURRER TO PETITION OF RAILROAD COMMISSION

To Honorable John M. Daniel, Attorney-General; Honorable Cordie Page, Assistant Attorney-General; Messrs. Melton & Belser and H. N. Edmunds, Esq., attorneys for petitioner:

[fol. 54] You will please take notice that on October 10, 1927, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, the respondents above named will move the Supreme Court of South Carolina, in the Supreme Court room at Columbia, South Carolina, to vacate the order issued upon the intervention petition herein by Honorable Eugene S. Blease, Justice of the Supreme Court, dated at Newberry, South Carolina, September 7, 1927, upon the ground that such order prejudicially affects and undrtakes to adjudicate material rights of the respondents herein and that the same was signed and issued ex parte and without notice or hearing accorded to respondents.

And failing therein, the respondents will demur to said intervention petition and will move the Supreme Court to strike out and dismiss the same, upon the grounds:

1. That the order permitting the same to be filed was issued ex parte and without notice or hearing accorded to respondents.

2. That it is beyond the constitutional and statutory authority of the Railroad Commission to take part in the enforcement of any duty against respondents, except such

duty as may result from an order of said Commission, after notice and hearing duly accorded respondents prior to and concerning the issuance of such order; that Order No. 356 of the Commission relates only to three lines of the respondent, Columbia Railway, Gas & Electric Company, and said Commission did heretofore, by Order No. 331, dated June 8, 1926, permit said Company, after notice and hearing to all concerned, to discontinue operation of its other lines of street railway, which order has not been [fol. 55] appealed from and has become res adjudicata under the statutes in such cases made and provided; that the respondent, Broad River Power Company, and the respondent, F. D. Campbell, were not parties to said Orders Nos. 356 and 331; that said Commission is without authority of law now to join in the prayer of the main petition and thereby seek to nullify its Order No. 331 without notice and hearing accorded respondent, Columbia Railway, Gas & Electric Company.

3. That it appears upon the face of the intervention petition that it does not state facts sufficient to constitute a cause of intervention, in that it seeks to introduce a new right or cause of action against one of the respondents entirely distinct and separate from the right or cause of action alleged in the main petition, and to allow such intervention would amount to a misjoinder of parties plaintiff and of causes of action, in violation of Sections 360 and 430 of the Code of Procedure, in that the causes of action so united would not affect all of the parties plaintiff or parties defendant but would amount to the insertion of separate causes of action, having separate parties plaintiff and parties defendant.

Elliott & McLain, J. B. S. Lyles, Attorneys for Respondents.

Columbia, S. C., September 16, 1927.

We hereby certify that the above demurrer is meritorious and not intended merely for delay.

W. C. McLain, J. B. S. Lyles, Attorneys for Respondents.

[fol. 56] IN SUPREME COURT OF SOUTH CAROLINA

RETURN AND ANSWER TO PETITION OF RAILROAD COMMISSION

The respondents, reserving and not waiving their right to make and present their motion and demurrer, notice of which has been heretofore served, by way of further return and answer to the intervention petition, pursuant to the order of Honorable Eugene S. Blease, dated September 7, 1927, would respectfully show:

1. Admit that Order No. 356 was passed on July 28, 1927, as alleged in paragraph one, but deny that same was directed to respondents and allege that same was directed only to the Columbia Railway, Gas & Electric Company. That said order was pased by a majority vote of four against a minority vote of three. That the minority also filed an opinion, to which reference is craved. That neither respondent Broad River Power Company nor F. D. Campbell have been parties to any order issued by the Commission relating to street car service.

2. Admit that twenty days have elapsed since the service of Order No. 356, as alleged in paragraph two, but deny the other allegations of said paragraph. And allege that any enforcement of said Order No. 356 would deprive the respondent, Columbia Railway, Gas & Electric Company, of its property without due process of law and deny to said respondent the equal protection of the laws, in violation of the Fourteenth Amendment of the Constitution of the United States and Section 5 of Article 1 of the Constitution of South Carolina, and that accordingly such respondent filed its bill in the District Court of the United States for the Eastern District of South Carolina to enjoin the members of the said Railroad Commission and the Attor- [fol. 57] ney-General of this State from enforcing the same upon such grounds.

3. Upon information and belief, deny the allegations of paragraph three.

4. Deny knowledge or information sufficient to form a belief as to the intention or purpose of petitioners as al-

leged in paragraph four; and, as to the return filed in the United States District Court, respondents crave reference thereto as to the contents thereof.

5. Deny the allegations of paragraph five, except that such Order No. 356 should be stayed by this Honorable Court, and allege that the same should be forever stayed. Respondents deny that any one of them is under any contractual or other legal duty, of any kind or character, to furnish street car service. And allege that said Order No. 356, and any other order of said Commission or of this Honorable Court, which would require the respondents, or any of them, to furnish street car service in accordance with the prayer of the petition in the main case, as well as that of this petition, would require respondents to furnish such service at a heavy and steady loss, considering operating expenses alone and without considering any other charges or any return on the value of the property thus required to be devoted to street car service and would confiscate the property of respondents and deprive them of their liberty and property without due process of law, and deny to them the equal protection of the laws, in violation of the Fourteenth A. ndment of the Constitution of the United States and Section 5 of Article 1 of the Constitution of South Carolina.

6. By way of further return and answer, respondents allege that by Order No. 331, dated June 8, 1926, respond-[fol. 58] ent Columbia Railway, Gas & Electric Company was authorized by the Railroad Commission to discontinue temporarily the operation of its Waverly lines, Shandon lines, Shandon Annex lines, Wales Gardens line, Fair Grounds line, Elmwood line, Hampton Avenue line and lines from the Union Station to the Fair Grounds, and required to continue operation of service then performed between the Union Station and Ridgewood and to furnish service between the Union Station and College Place and between the Union Station and Colonial Heights; the Commission at previous hearings concerning this respondent having gone on record in various orders passed, respecting street railway service in Columbia and suburbs, to the effect that such respondent was operating its street railway system at a tremendous loss, considering alone oper-

ating expenses and not considering any other charges or any return on its investment. That by its Order No. 349, dated April 7, 1927, passed by a majority vote, the Railroad Commission, on petition of respondent, Columbia Railway, Gas & Electric Company, permitted the discontinuance of all street car lines owned by said respondent, and that Order No. 356 was only passed after a rehearing and subsequent to the death of one of the members voting in favor of Crder No. 349, and succession to his office by another member.

And respondents allege that all such orders previous to and including Order No. 331 were passed by the Commission after notice and hearing duly accorded to the public, as required by the Act of March 24, 1922 (32 Stat. 938); and that no rehearing was asked or appeal taken concerning said Order No. 331, and that it has become and now is [fol. 59] res adjudicata and authority to the respondent, Columbia Railway, Gas & Electric Company, to discontinue service on the lines therein stated. And your respondents allege that the Railroad Commission has no authority of law to seek in this manner to abrogate and destroy the effect of said Order No. 331.

7. By way of further return and answer, the respondents adopt as a part hereof their return in the main case, a copy of which is hereto attached.

Wherefore, respondents pray that the petition herein be dismissed with costs.

Elliott & McLain, J. B. S. Lyles, Attorneys for Respondents.

(Duly verified by F. D. Campbell.)

IN SUPREME COURT OF SOUTH CAROLINA

INTERVENTION PETITION OF NORTH COLUMBIA LAND COMPANY

To the Honorable Supreme Court of the State of South Carolina:

The petitioner, North Columbia Land Company, intervening in this proceeding by leave of this Court, respectfully shows:

1. That the petitioner North Columbia Land Company is a corporation duly created and existing under the laws of the State of South Carolina, having its principal place of business in the City of Columbia, S. C., that it is engaged, and has been for many years engaged, principally in the development of a tract of land consisting of several hundred acres situate three or four miles to the north of the City of Columbia belonging to petitioner, the said tract being [fol. 60] known as College Place, and situate largely within the present Town of Arden, a suburb of the City of Columbia.

2. That heretofore during the year 1906 this petitioner entered into a written contract with the Columbia Railway, Gas & Electric Company (then Columbia Electric Street Railway, Light & Power Company) thereafter amended in 1908, under and by the terms of which the respondent Railway Company for a cash consideration and the transfer by the petitioner to the said Street Railway Company of the street car line which had been built by the petitioner through its property, undertook and agreed to provide at the regular fare street car service over the street car line to petitioner's property hereinabove referred to, from the terminus of such line to and through the City of Columbia and its environs, over the street car system of the said respondent company; that it was expressly agreed that the said respondent Company should furnish regular and proper street car service of not less than one car per hour during the usual hours of service, and should moreover provide a regular system of connections and transfers over the said line running from petitioner's property to the other lines operated by the respondent Company in and around the City of Columbia; and it was particularly and expressly agreed in and by the said contract that the said service in consideration of the premises should continue and be rendered by the Columbia Railway, Gas & Electric Company, and its successors in perpetuity.

3. That in pursuance of the said contract hereinabove referred to the respondent Company took over the street car line, received and accepted the cash consideration paid [fol. 61] by your petitioner, inaugurated a thirty minute schedule over such line, and for many years down to the year 1927 respondent Company continued to furnish street car service over the said line and throughout such period, as

petitioner is informed and believes, enjoyed a fair and remunerative patronage on the same; that the said contract has continued and still is in force and effect and has at all times been recognized by said respondent Company as valid and binding; that the said contract for such street car service always has been and now is a matter of vital importance to your petitioner and to the members of the public who purchased property from your petitioner, relying upon the continuance of such street car service under such contract.

4. That the attempted transfer by the respondent Columbia Railway, Gas & Electric Company of the bulk of its assets during the year 1925 to the respondent Broad River Power Company was without the consent or approval of your petitioner and was and is highly prejudicial to petitioner's rights and, as petitioner is informed and believes, should be set aside, and that the subsequent attempted discontinuance by the said respondents of the street car service over all its lines in the City of Columbia and its environs in March, 1927, is in violation of petitioner's contract rights and without regard to the public duties of said respondent Companies; that the said contract hereinabove referred to was made for the benefit of the public, particularly of such members thereof as settled on petitioner's property and who have built up the Town of Arden, and that your petitioner and the public generally will suffer irreparable injury unless the respondents are required by this Honorable Court to reinstate and restore adequate street car service over their street car lines.

[fol. 62] 5. That your petitioner is familiar with the allegations contained in the main petition herein filed by the State of South Carolina, and your petitioner is informed and believes that the said allegations are true and correct, and your petitioner desires to join in this proceeding, and that the relief therein prayed for should be granted.

Wherefore your petitioner prays that it be allowed to join in this proceeding and that the relief prayed for in the main petition herein be granted.

Nelson & Mullins, Melton & Belser, Attys. for Petitioner.

Columbia, S. C., September 6, 1927.

(Duly verified by W. G. Belser.)

IN SUPREME COURT OF SOUTH CAROLINA

NOTICE OF MOTION AND DEMURRER TO PETITION OF NORTH COLUMBIA LAND COMPANY

To Messrs. Melton and Belser and Nelson and Mullins, attorneys for petitioner:

You will please take notice that on October 10th, 1927, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, the respondents above named will move the Supreme Court of South Carolina, in the Supreme Court room at Columbia, to vacate the order in the main cause, signed by Honorable R. C. Watts, Chief Justice, dated August 3rd, 1927, under which this intervention petition is filed, on the ground that such order prejudicially affects and undertakes to adjudicate material rights of the respondents herein and that the same was issued ex parte and without notice or hearing accorded to the respondents.

[fol. 63] And failing in that, the respondents will demur to the intervention petition herein on the grounds:

1. That it appears upon the face of such petition that this Court has no jurisdiction over the persons of respondents, because

(a) The order under which this intervention petition is filed prejudicially affects material rights of the respondents, and was issued ex parte.

(b) That any right or cause of action that petitioner may have against defendants can be enforced only by the commencement of an action by service of a summons, as provided in Sections 383 and 384 of the Code of Procedure.

2. That it appears upon the fact of the petition that it does not state facts sufficient to constitute a cause of action or a cause of intervention, in that

(a) The intervention petition alleges no facts creating any legal duty or obligation on the part of respondents, or any of them, in favor of petitioner, to furnish street car service.

(b) The Attorney-General has no right or authority to enforce any right that intervening petitioner may have against respondents, the same, if any, being a private right.

(c) That the intervening petitioner has no right to join with the Attorney-General in the enforcement of any alleged public right set forth in the main petition, because such intervening petitioner has no right to represent the public and has not suffered any peculiar or special damage or injury, differing in kind, as well as degree, from that suffered by the general public and resulting directly and immediately [fol. 64] from the breach of any public duty, as alleged in the petition, so as to entitle intervening petitioner to a writ of mandamus.

(d) That intervening petitioner has a plain, adequate and complete remedy at law for the enforcement of any right that he may have against respondents, either by proceeding before the Railroad Commission under the Act of 1922, or by action at law, or in equity.

(e) That the intervening petitioner has no direct or immediate interest in the alleged public right claimed in the main petition, and seeks by intervention to introduce an additional right or cause of action entirely distinct and separate from the alleged right claimed in the main petition, creating a misjoinder of parties plaintiff, in violation of Section 360, and a misjoinder of causes of action, in violation of Section 430 of the Code of Procedure.

Elliott & McLain, J. B. S. Lyles, Attorneys for Respondents.

Columbia, S. C., September 23, 1927.

We hereby certify that the above demurrer is meritorious and is not intended merely for delay.

W. C. McLain, J. B. S. Lyles, Attorneys for Respondents.

IN SUPREME COURT OF SOUTH CAROLINA

RETURN AND ANSWER TO PETITION OF NORTH COLUMBIA LAND COMPANY

Respondents above named, reserving and not waiving their right to insist upon their motion to vacate and de-

murrer to the order and petition herein, notice of which has been heretofore served, by way of return and answer to the intervention petition:

[fol. 65] 1. Admit the allegations of Paragraph one thereof.

2. With reference to the allegations of Paragraph two, admit that a written contract was entered into between respondent Columbia Railway, Gas & Electric Company, under its former name, and petitioner in 1906 (amended in 1908), relating to the construction of an extension to a line of street railway formerly constructed by the Hyatt Improvement Company, connecting with the line of said respondent at Hyatt's Park, and the operation of said line of Hyatt Improvement Company and the extension thereto; but respondents deny that said contract imposed upon the Columbia Railway, Gas & Electric Company any obligation to operate any street cars other than on said line and extension. And further deny that said contract required said respondent to provide a regular system of connections or transfers to or over other lines operated by the respondent in and around the City of Columbia. And deny that said respondent agreed by said contract to furnish regular and proper street car service during the usual hours of service. And further deny that said respondent agreed by said contract that the street car service called for thereby should continue or be rendered in perpetuity, or that the same required perpetual operation of cars.

And by way of further return and answer to said Paragraph two, upon information and belief, respondents allege:

(a) That said contract was ultra vires of both parties thereto and was entered into without lawful authority by the officers of the contracting corporations and was, and is, against public policy, illegal and, therefore, null and void.

[fol. 66] (b) That said contract was executed in contemplation of the reserved police power of the state and subject to the lawful exercise thereof in all respects, and that said police power was heretofore, on June 8, 1926, and prior thereto, lawfully exercised by orders of the Railroad Commission of South Carolina, issued within and pursuant to the constitutional and statutory authority of said Com-

mission, discontinuing the street car lines of the respondent Columbia Railway, Gas & Electric Company, except the lines to Ridgewood, College Place and North Columbia, and requiring service of such respondent only over such lines.

(c) That said respondent Company was without authority of law to contract to furnish street car service perpetually, as petitioner well knew, and that said contract required the furnishing of the street car service called for thereby only so long as the same served the best interests of the public and said respondent Company. And that it has long since been established that street cars cannot be operated over said line and extension, or elsewhere in and around Columbia, except at a great financial loss, considering alone operating expenses, and that such street car service was not desired or used by the public enough to pay even the operating expenses. And that by reason of the foregoing the said respondent Company is not required to continue the operation of street cars under said contract or otherwise.

(d) That said contract has been fully performed and the obligations thereof fully discharged by said respondent.

(e) That respondents, nor any of them, are able longer to perform the terms and conditions of said contract, even [fol. 67] if it should be held to be now of any force and effect, due to the fact that the consideration moving to the Columbia Railway, Gas & Electric Company thereunder has completely failed, and that, due to competition and the increased use of private and public automobiles, said Company has become financially unable to operate any street cars, for which reason said contract, if the same be now of force, which is denied, has become impossible of performance.

(f) That neither one of respondents has any right, privilege or franchise to operate street cars over or along the streets of the Town of Arden, through which the line in question runs.

3. By way of return and answer to Paragraph three, allege that, pursuant to the contract, the said respondent took over the line of the Hyatt Improvement Company and constructed the extension thereto, paying one-half of

the cost of the construction of such line and extension, inaugurated a schedule, or schedules and down to 1927 furnished street car service over such line and extension; but, upon information and belief, deny the allegations of said paragraph inconsistent herewith and all remaining allegations of said paragraph.

4. Deny the allegations of Paragraph four, except the allegation that the transfer of certain properties to Broad River Power Company by Columbia Railway, Gas & Electric Company was without the consent or approval of petitioner, and with reference thereto allege that no such consent or approval was necessary, and, further, that said contract is not of record in the proper recording offices of Richland County, and at the time of said transfer its existence was unknown to said Broad River Power Company [fol. 68] and to the officers of Columbia Railway, Gas & Electric Company, and that said Broad River Power Company was a purchaser of the properties so purchased for value and without notice of said contract or its contents.

5. On information and belief, deny the allegations of paragraph five.

6. Respondents deny all allegations of the petition not heretofore specifically admitted or denied.

7. By way of further return and answer, deny any allegation or suggestion of the petition that the respondent F. D. Campbell or the respondent Broad River Power Company in any wise or in any way ever became obligated to perform the contract alleged in the petition, by assumption thereof or otherwise. That any order or judgment requiring the respondents, or any of them, to furnish any street car service to petitioner, or to anyone claiming through petitioner, would require such service to be furnished at a heavy and steady loss, considering only operating expenses, would confiscate the property of such respondent and deprive it of its property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States and Section 5 of Article 1 of the Constitution of South Carolina; and would take the property of such respondent without its consent and without just compensation being first made therefor, in viola-

tion of Section 17 of Article 1 of the Constitution of South Carolina.

8. That petitioner has no right to the relief prayed for in a proceeding for mandamus, in that mandamus is not the proper remedy for the enforcement of a contract, and petitioner has other plain and adequate remedy.

[fol. 69] 9. That any order or judgment requiring Broad River Power Company to operate street cars as prayed for in the petition, or otherwise, would be detrimental to the public interests, in that such operation would prevent the furnishing of adequate and proper electric and gas services to the public and would ultimately result in the wrecking of said Broad River Power Company.

10. And by way of further answer and return, respondent Columbia Railway, Gas & Electric Company, in the event it should be determined that petitioner has any legal or equitable right in said contract, stands ready and willing and hereby offers to return and deed back to petitioner all rights and property acquired under and pursuant to said contract, together with improvements now on said property, and to refund to petitioner all moneys expended by it in the construction of the said line and extension thereto, together with interest thereon at the legal rate.

Wherefore respondents pray that petition be dismissed with costs.

Elliott & McLain, J. B. S. Lyles, Attorneys for Respondents.

Columbia, S. C., September 22, 1927.

(Duly verified by F. D. Campbell.)

IN SUPREME COURT OF SOUTH CAROLINA

INTERVENTION PETITION OF CITY OF COLUMBIA

To the Honorable Supreme Court of the State of South Carolina:

This petition of the City of Columbia by the relators above named respectfully shows to the Court:

[fol. 70] 1. That the City of Columbia is a municipal corporation duly created and existing under the laws of the

State of South Carolina, and as such is charged with certain rights and duties with reference to the regulation of the streets of the City of Columbia; and that the relators L. B. Owens, Mayor, F. A. Hoefer, Wm. P. Eleazer, C. C. Stanley and F. S. Killingsworth are the duly elected councilmen of such City, and as such charged with the administration of the affairs of the said City.

2. That upon the incorporation of the respondent Columbia Railway, Gas & Electric Company in 1891 and of its predecessors as set forth in the petition of the State of South Carolina herein, the said City of Columbia granted to the said Railway, Gas & Electric Company the right to make use of the streets of the said City for the purpose of furnishing public utilities of light, power and transportation service, subject to various conditions and requirements as contained in the City Ordinances, that among such conditions and requirements it was expressly provided that it should be the duty of the Company on week days to run a car for passengers at least every hour from 7 A. M. to 9 P. M. (Sec. 583), and that the said Company should comply with all the rules, regulations and ordinances of the City of Columbia now of force or hereinafter to be enacted relating to the operation of the street railways (Sec. 597), and that the City of Columbia should have the power and reserve the right to regulate by ordinances the manner of operating said electric railway and to order and amend the ordinances by such further enactments as in their judgment the public welfare should demand (Sec. 599), and also that [fol. 71] the said Company should keep its tracks at all times in good condition, as will more fully appear by reference to the Revised Ordinances of the City of Columbia 1920 (Secs. 579-607, 708-711, 736) and to the amendments thereto.

3. That the said Railway, Gas & Electric Company accepted the franchise to operate the said Electric Railway in the City of Columbia subject to the above mentioned conditions and requirements, and from time to time obtained the right to lay their street car tracks in certain of the streets of the said City of Columbia, always however subject to the said conditions and requirements and to the obligation to obey the Ordinances of the City of Columbia regulating the operation of the same, and that throughout

the period from the incorporation of the said Company in 1891 down to the year 1925 the said Company recognized the right of the City Council to regulate the operation of said pulic utilities in the City of Columbia by the said Company and the obligation to furnish the said street car service as a part of its duties to the public, and throughout such period the said Company continued to enjoy the exclusive privilege of furnishing such public utilities of gas, electric light and street car service to the City of Columbia and its suburbs.

4. That about the year 1912, as this petitioner is informed and believes the said Railway, Gas & Electric Company also acquired all the rights and assets and became merged with and charged with the liabilities of the Suburban Transit Company, a corporation formerly created for the purpose of operating a street car line to the suburban section known as Colonial Heights and to which the said City of Columbia had granted a franchise to operate such electric railway line along Bull Street from its [fol. 72] intersection with Laural Street and to erect the necessary poles and wires by Ordinance dated April 9, 1907, that the grant of such right and franchise to the said Transit Company was made subject to the express provision and requirement that the said Suburban Transit Company should obey all the City Ordinances relative to the Electric Street Railways and all the amendments thereto and that the passenger fare should never exceed five cents, and that the said Transit Company covenanted and agreed to conform to all the regulations and ordinances of the City of Columbia and to maintain the streets between their tracks and to file its acceptance of the said Ordinance within ten days, and should complete and operate the said railway within one year from the date thereof, as will more fully appear by reference to the Revised Ordinances of 1920 (Secs. 608-612); that the said Suburban Transit Company did accept the said terms and conditions and lay its tracks and erect its necessary poles and wires and operated the same until the same were transferred to and merged with the said Columbia Railway, Gas & Electric Company, which thereby became charged with all the liabilities of the said Transit Company, including particularly the obligation to furnish transportation over said line at five cents for each passenger fare.

5. That the attempted separation by the respondent companies in 1925 of the franchise and rights of the respondent Columbia Railway, Gas & Electric Company by which the bulk of its assets were ostensibly transferred to the Broad River Power Company, was without the consent or approval of the City of Columbia and was, as your relators are informed and believe, made for the purpose of evading the obligation to operate the street car service and was in vio- [fol. 73] lation of the contract and public rights of this petitioner and was null and void; that moreover the said respondents have continued to enjoy the right and privilege of furnishing the public utilities of gas, light and power to the City of Columbia, for which they have demanded payment in the name of the Broad River Power Company and have also used he same poles largely for carrying the said light wires and for carrying the trolley wires which were formerly used and ostensibly operated by the said Columbia Railway, Gas & Electric Company in connection with the street car service until the same was discontinued by the said Company in March, 1927.

6. That from time to time during the year 1925 the said respondent Columbia Railway, Gas & Electric Company made various overtures and requests of the City Council to obtain permission to discontinue the street car service and to substitute a bus company instead, which negotiations culminated in a letter from the said Railway Company dated October 30, 1925 asking City Council's aproval of its suspension of such service for one year, that City Council through its duly elected officers immediately disapproved such proposed plan and referred the said letter to the city attorney for such action as might be best to compel continuance of street car service in Columbia and if necessary to carry the matter to the courts; that thereafter the said Railway, Gas & Electric Company ceased to make application to the City Council for leave to discontinue such street car service, but did from time to time make application to and obtained permission from the Railway Commission of the State of South Carolina to discontinue certain of its lines of street railway, on the alleged ground that the same [fol. 74] were unprofitable, all of which however was done without consultation with or the consent of the said City of Columbia.

7. That the attempted discontinuance by the said street car Company in March, 1927 of all of its street car lines in the City of Columbia and the suburbs was without the consent or approval of the City of Columbia or of the Railway Commission and was as your relators are informed and believe utterly unjustified and illegal and in violation of the rights of the said City of Columbia and in disregard of all the duties of the said respondent companies as public service corporations, and is highly prejudicial to the City of Columbia and all the inhabitants thereof.

8. That your relators are of the opinion that the street car is by far the best permanent form of transportation for the City of Columbia; that your relators have from time to time during the past few years offered to give to the said respondent companies all reasonable and proper protection against undue competition, provided the said companies would undertake to give adequate and satisfactory street car service, but that the said companies consistently declined to take advantage of such offers or to give proper service on the street cars, and themselves by their conduct discouraged patronage and invited competition, particularly from the buses; that your relators have uniformly maintained the position that the said street car service should be restored and that the said City of Columbia was of right entitled to have such street car service operated by the respondent companies.

9. That on June 7, 1927 City Council passed the following resolution unanimously:

[fol. 75] "We as City Council of the City of Columbia feel that a well regulated street car service is the best solution of the transportation problem of our City.

And whereas said Council believe that this is the opinion of a majority of the citizens, including the transportation committee recently appointed by City Council,

And whereas the operation of street car service which will adequately and reasonably serve the public convenience and necessity, will make unnnecessary the operation of busses and other vehicles for hire on the streets of said City, the operation of which upon the crowded streets is

endangering the public safety and will continue to do so with increasing commerce and traffic of the City.

Now, therefore be it resolved by City Council of the City of Columbia that the present owners of the street railway system be requested to immediately resume operation with the assurance from City Council that they will immediately pass and attempt to rigidly enforce all needful rules, regulations, ordinances, as it may legally pass, as will afford to the street car service full protection in such service and relieve said street car service from any and all competition.

Be it further resolved that a copy of this resolution be immediately forwarded to the Broad River Power Company, whom Council is advised are the owners of a majority of stock of the Columbia Railway, Gas & Electric Company, and that they be requested to advise Council as to whether or not they are willing to resume operation."

[fol. 76] that in pursuance of such resolution Council requested the officers of the said respondent companies to meet with them for the purpose of discussing the resumption of street car service by the said companies under the terms of the said resolution, but the said companies flatly declined to consider the peaceful restoration of the said street car service and announced that they would not obey any order of the Railroad Commission or of the City Council directing them to resume said operation.

10. That under these circumstances, as your relators are informed and believe the said City of Columbia and all the inhabitants thereof will suffer irreparable injury unless the said respondent companies are compelled and required by the order of this Court to resume and maintain a full and adequate schedule of street car service on their street car lines in the City of Columbia and its suburbs; that your relators are informed and believe that all the allegations contained in the main petition by the State of South Carolina are true and correct and the relief therein prayed for should be granted.

Wherefore your petitioner prays that it be allowed to join and intervene in this proceeding and that the relief prayed for in the main petition be granted.

Colin Monteith.

Columbia, S. C., August 2, 1927.

(Duly verified by G. F. Cooper.)

[fol. 77] In Supreme Court of South Carolina

Notice of Motion and Demurrer to Petition of City of Columbia

To Messrs. Melton and Belser, attorneys for petitioners:

You will please take notice that on October 10th, 1927, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, the respondents above named will move the Supreme Court of South Carolina, in the Supreme Court room at Columbia, to vacate the order in the main cause, signed by Honorable R. C. Watts, Chief Justice, dated August 3rd, 1927, under which this intervention petition is filed, on the ground that such order prejudicially affects and undertakes to adjudicate material rights of the respondents herein and that the same was issued ex parte and without notice or hearing accorded to the respondents.

And failing in that, the respondents will demur to the intervention petition herein on the grounds:

1. That it appears upon the face of such petition that this Court has no jurisdiction over the persons of respondents, because

(a) The order under which this intervention petition is filed prejudicially affects material rights of the respondents, and was issued ex parte.

(b) That any right or cause of action that petitioners may have against respondents can be enforced only by the commencement of an action by service of a summons, as provided in Sections 383 and 384 of the Code of Procedure.

2. That it appears upon the face of the petition that it does not state facts sufficient to constitute a cause of action or a cause of intervention, in that

[fol. 78] (a) The intervention petition alleges no facts creating any legal duty or obligation on the part of respondents, or any of them, in favor of petitioners, to furnish street car service.

(b) The Attorney-General has no right or authority to enforce any right that intervening petitioners may have against respondents, the same, if any, being a private right.

(c) That the intervening petitioners have no right to join with the Attorney-General in the enforcement of any alleged public right set forth in the main petition, because such intervening petitioners have no right to represent the public and have not suffered any peculiar or special damage or injury, differing in kind, as well as degree, from that suffered by the general public and resulting directly and immediately from the breach of any public duty, as alleged in the petition, so as to entitle intervening petitioners to a writ of mandamus.

(d) That intervening petitioners have a plain, adequate and complete remedy at law for the enforcement of any right that they may have against respondents, either by proceeding before the Railroad Commission under the Act of 1922, or by action at law, or in equity.

(e) That the intervening petitioners have no direct or immediate interest in the alleged public right claimed in the main petition, and seek by intervention to introduce an additional right or cause of action entirely distinct and separate from the alleged right claimed in the main petition, creating a misjoinder of parties plaintiff, in violation of Section 360, and a misjoinder of causes of action, in violation [fol. 79] of Section 430 of the Code of Procedure.

Elliott & McLain, J. B. S. Lyles, Attorneys for Respondents.

Columbia, S. C., September —, 1927.

We hereby certify that the above demurrer is meritorious and is not intended merely for delay.

W. C. McLain, J. B. S. Lyles, Attorneys for Respondents.

IN SUPREME COURT OF SOUTH CAROLINA

RETURN AND ANSWER TO PETITION OF CITY OF COLUMBIA

The respondents above named making return and relpying to the petition herein of the City of Columbia:

1. Deny each and every allegation of said petition not hereinafter specifically admitted.

2. Admit the allegations of Paragraph one of the petition.

3. Admit, with reference to the allegations of Paragraph two that the City of Columbia at various times beginning in 1886 has passed ordinances, including those specifically referred to, purporting to regulate in certain respects the operation of street cars over and along certain streets of Columbia, but respondents have no information sufficient to form a belief and therefore deny, (1) that as to all tracks laid it was necessary to obtain the consent of the City of Columbia, since the right to grant such use vested solely in the State of South Carolina except in such instances as said State vacated said right, (2) deny on information and [fol. 80] belief any grant by the City of Columbia to make use of said city streets for furnishing gas or electricity to either respondents or their predecessors, (3) deny that said ordinance requiring operation of cars hourly applies to any line except the original line referred to in the ordinance of 1886, (4) deny that said ordinances created any obligation by contract or otherwise, or that they were intended to create such obligation.

4. With reference to the allegations of Paragraph three respondents deny that either they or their predecessors accepted or were over granted a franchise by the City of Columbia to operate street cars in said City, but they admit that in so far as possible they obeyed the various city ordinances and recognized the right of the City of Columbia to make and enforce certain police regulations governing the operation of street cars and care of said streets, and they also admit that it has eventuated that respondents or one or more of them have enjoyed the exclusive privilege of furnishing gas, electricity and street car service to the City of Columbia and its suburbs, but

they deny that they have done so by reason of any exclusive grant, franchise, or other legal right.

5. Respondents have no knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph four of the petition and therefore deny same, except they admit that Suburban Transit Company was purchased, not merged, in 1912, and as to the obligation to charge a five cents fare, allege that the increase to seven cents and later to ten cents was pursuant to authority granted by said City of Columbia or other duly constituted authority and or was acquiesced in by said City of Columbia.

[fol. 81] 6. With reference to the allegations of Paragrap five respondents admit, (1) that the transfer of certain properties to Broad River Power Company was without the consent of the City of Columbia or its specific approval, (2) that they have continued to furnish the utilities alleged, and (3) that where feasible and practicable certain poles have been jointly used by Columbia Railway, Gas & Electric Company and Broad River Power Company, and for such use a fair consideration has been paid, but respondents deny the other allegations of said Paragraph.

7. With reference to the allegations of Paragraph six respondents deny they ever offered to substitute a bus service for street car service, and as to the remaining allegations crave reference to the letters and other public records setting forth the alleged negotiations and actions.

8. Deny the allegations of Paragraph seven of the petition except the allegation that discontinuance of street cars on March 11th, 1927, was without the consent or approval of the City of Columbia or the Railroad Commission of South Carolina.

9. Respondents have no knowledge or information as to real opinion of relator as to the best form of public transportation for the City of Columbia, but do allege on information and belief that, since 1922, the public and official action of said City of Columbia has favored transportation by jitneys and was calculated to and actually did increase the losses suffered by street car operation, and further respondents are in-

formed and believe that the City Council of the City of Columbia has never made a bona fide effort to curtail competition with street cars by jitneys but has, for reasons [fol. 82] unknown to respondents, encouraged jitney competition so that respondents could at no time afford to make engagements for the operation of street cars based upon vague and indefinite promises by said City Council.

10. Admit the allegations of Paragraph nine of the petition.

11. Deny the allegations of Paragraph ten of the petition.

12. And further respondents adopt as a part hereof their return in the main case copy of which is hereto attached.

13. And respondents hereby specifically and especially claim the benefits of Section 585 of Revised Ordinances of the City of Columbia, 1920, providing the penalty for discontinuance of street car service and hereby consent to comply with said ordinance, and further respondents, while taking the position that no franchise or contract obligation exists requiring continued operation of street cars, hereby offer to relinquish, surrender and return to said City of Columbia whatever franchise or other rights relating to the operation of street cars it may be determined belong to said respondents or either of them, and hereby agree to make no opposition to the taking over of public transportation by any other persons or corporations.

Wherefore respondents pray that said petition be dismissed with costs.

Elliott & McLain, Attorneys for Respondents.

(Duly verified by F. D. Campbell.)

[fol. 83] In Supreme Court of South Carolina

Order Allowing W. B. Burney to Intervene

This matter coming before the court upon the duly verified application of W. B. Burney to be allowed to intervene in this proceeding and to be made a party thereto, now with the consent of the attorneys for the State of South Carolina,

It is hereby

Ordered and adjudged that the said petitioner, W. B. Burney, be and hereby is allowed to join in this proceeding and to be made a party thereto.

It is further ordered that a copy of this order, together with a copy of this petition, be forthwith served upon the respondents above named, who may if they are so advised file a return to the same within ten days, whereupon the said petitioner shall have the right, if it be so advised, to file a reply to such return within five days after the service of the same.

R. C. Watts, Chief Justice.

Columbia, S. C., August 3, 1927.

We consent. John M. Daniel, Melton & Belser, Attorneys for State of S. C.

A true copy. J. B. Westbrook, Clerk of the Supreme Court.

[fol. 84] In Supreme Court of South Carolina

Intervention Petition of W. B. Burney

To the Honorable Supreme Court of the State of South Carolina:

This petition of W. B. Burney respectfully shows to the Court:

1. That your petitioner is now and has long been a citizen and resident of the City of Columbia, having been Professor of Chemistry at the University of South Carolina for upwards of forty years.

2. That this petitioner is now and has for many years past been the owner of a considerable tract of land situate about two or three miles to the southeast of the City of Columbia between the section of said City known as Shandon, Shandon Annex and Wales Gardens; that for the purpose of developing such property and of furnishing transportation back and forth to the City of Columbia to the inhabitants of such community, your petitioner entered

into an agreement during the year 1910 with the Shandon Annex Company, a domestic corporation then engaged in the development of the section now known as Shandon Annex, and with the Columbia Railway, Gas and Electric Company, the public service corporation above named (then known as the Columbia Electric Street Railway, Light & Power Company), as evidenced by written contract between the said Railway, Gas & Electric Company and the Shandon Annex Company dated 30 May, 1910 and contract between your petitioner and the said Shandon Annex Company dated 30 June, 1910, under which agreement your petitioner and the said Annex Company agreed to pay Six Thousand ($6,000.00) Dollars each in cash toward the [fol. 85] construction of a street car line through petitioner's said property and into the property of the said Shandon Annex Company, to do certain grading work, to furnish a street car for use on such line and to furnish a 30-ft. right of way, in consideration of which the said Railway, Gas & Electric Company agreed to build and operate the said line of railway and to furnish transportation thereon back and forth to the City of Columbia and fare of five cents and transfers to the other lines of railway operated by the said respondent in said City, and to maintain a regular schedule on the said line of not less than one hour, it being understood that the said service should be maintained by the said Company permanently as will be seen by reference to the said contracts; that the said petitioner and the Shandon Annex Company carried out their portions of the said agreement, each contributing the sum of Six Thousand ($6,000.00) Dollars, furnishing the 30-ft. right of way to the said Company and thereafter turned over and delivered the said street car line, together with all the equipment connected therewith to the respondent Columbia Railway, Gas & Electric Company, which accepted the same and thereafter continued to make use of and to operate the same continuously down to March, 1927, when the said Company undertook to and did illegally discontinue the same.

3. That the said contract hereinabove referred to was entered into by this petitioner and the said Shandon Annex Company with the said Street Railway Company ex-

pressly for the purpose of providing street car service for the benefit of the then inhabitants and prospective settlers in the community; and on information and belief that many [fol. 86] persons, now citizens of the City of Columbia, thereafter purchased property either from this petitioner or from the Shandon Annex Company in reliance upon the said agreement and understanding that the said street car service would continue to be furnished by the said Street Car Company permanently; that recently this petitioner has sold a considerable block of such property to Chicora College as a site for the establishment of such educational institution, and that as petitioner is informed and believes the operation and existence of said street car line was a material inducement to the said College in making such purchase.

4. That beginning about the year 1925, or perhaps earlier, said Street Car Company commenced to and continued to furnish inadequate and unsatisfactory street car service along the said line, and thereafter attempted to and did completely discontinue all such service during the month of March, 1927; that the attempted discontinuance by the Street Car Company of its service over the said line was and is highly prejudicial to this petitioner and to the citizens of the community thereby affected and is in utter violation of and without regard to the contract rights of this petitioner and of the citizens of the said communities; that as this petitioner is informed and believes there are several thousand persons who purchased property in the area formerly served by the said street car line and who relied upon the continued operation of such street car line and who are largely dependent thereupon for transportation back and forth to the City of Columbia; that your petitioner and all such persons are suffering and will continue to suffer irreparable injury unless the respondent com- [fol. 87] panies are required and compelled to restore and maintain full and adequate street car service upon the said line.

5. That your petitioner is informed and believes that all the allegations contained in the main petition herein are true and correct and your petitioner desires to join therein and be allowed to intervene in this proceeding, and that

your petitioner believes the relief therein prayed for should be granted.

Wherefore your petitioner prays that he be allowed to intervene and join in the proceedings in this case, and that the relief prayed for in the main petition be granted, and your petitioner will ever pray.

C. T. Graydon, Melton & Belser, Attorneys for Petitioner.

(Duly verified by W. B. Burney.)

IN SUPREME COURT OF SOUTH CAROLINA

NOTICE AND DEMURRER TO PETITION OF W. B. BURNEY

To Messrs. Melton and Belser and C. T. Graydon, attorneys for petitioner:

You will please take notice that on October 10th, 1927, at ten o'clock in the foremoon, or as soon thereafter as counsel can be heard, the respondents above named will move the Supreme Court of South Carolina, in the Supreme Court room at Columbia, to vacate the order in the main cause, signed by Honorable R. C. Watts, Chief Justice, dated August 3rd, 1927, under which this intervention petition is filed, on the ground that such order prejudicially affects and undertakes to adjudicate material rights of the [fol. 88] respondents herein and that the same was issued ex parte and without notice or hearing accorded to the respondents.

And failing in that, the respondents will demur to the intervention petition herein on the grounds:

1. That it appears upon the face of such petition that this Court has no jurisdiction over the persons of respondents, because

(a) The order under which this intervention petition is filed prejudicially affects material rights of the respondents, and was issued ex parte.

(b) That any right or cause of action that petitioner may have against respondents can be enforced only by the

commencement of an action by service of a summons, as provided in Sections 383 and 384 of the Code of Procedure.

2. That it appears upon the face of the petition that it does not state facts sufficient to constitute a cause of action or a cause of intervention, in that

(a) The intervention petition alleges no facts creating any legal duty or obligation on the part of respondents, or any of them, in favor of petitioner, to furnish street car service.

(b) The Attorney-General has no right or authority to enforce any right that intervening petitioner may have against respondents, the same, if any, being a private right.

(c) That the intervening petitioner has no right to join with the Attorney-General in the enforcement of any alleged public right set forth in the main petition, because such intervening petitioner has no right to represent the public and has not suffered any peculiar or special damage or injury, differing in kind, as well as degree, from that [fol. 89] suffered by the general public and resulting directly and immediately from the breach of any public duty, as alleged in the petition, so as to entitle intervening petitioner to a writ of mandamus.

(d) That interening petitioner has a plain, adequate and complete remedy at law for the enforcement of any right that he may have against respondents, either by proceeding before the Railroad Commission under the Act of 1922, or by action at law, or in equity.

(e) That the intervening petitioner has no direct or immediate interest in the alleged public right claimed in the main petition, and seeks by intervention to introduce an additional right or cause of action entirely distinct and separate from the alleged right claimed in the main petition, creating a misjoinder of parties plaintiff, in violation of Section 360, and a misjoinder of causes of action, in violation of Section 430 of the Code of Procedure.

Elliott & McLain, J. B. S. Lyles, Attorneys for Respondents.

Columbia, S. C., September —, 1927.

We hereby certify that the above demurrer is meritorious and is not intended merely for delay.

W. C. McLain, J. B. S. Lyles, Attorneys for Respondents.

IN SUPREME COURT OF SOUTH CAROLINA

RETURN TO PETITION OF W. B. BURNEY

The respondents making return in accordance with the order of the Honorable R. C. Watts, Chief Justice, to the petition herein respectfully show that:

[fol. 90] 1. They admit the allegations of Paragraph one.

2. They have no knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph two of the petition and therefore deny the same, and deny specifically that W. B. Burney entered into a contract with Columbia Electric Street Railway, Light & Power Company, or that the alleged contract between said Company and Shandon Annex Company was ever consummated.

3. Have no knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph three and therefore deny the same.

4. Have no knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 4 and therefore deny the same except the allegation that the Columbia Railway, Gas & Electric Company did completely discontinue all street car service during the month of March, 1927.

5. And further answering the petition and as a part thereof adopt the answer and return to the petition of the State of South Carolina as a part thereof, a copy of which is hereto attached.

Wherefore respondents pray that the petition be dismissed.

Elliott & McLain, Attorneys for Respondents.

(Duly verified by F. D. Campbell.)

IN SUPREME COURT OF SOUTH CAROLINA

ORDER ALLOWING COLUMBIA COLLEGE TO INTERVENE

This matter coming before the court upon the duly verified application of the Columbia College to be allowed to [fol. 91] intervene in this proceeding and to be made a party thereto, now with the consent of the attorneys for the State of South Carolina,

It is hereby

Ordered and adjudged that the said petitioner, the Columbia College, be and hereby is allowed to join in this proceeding and to be made a party thereto.

It is further ordered that a copy of this order, together with a copy of this petition, be forthwith served upon the respondents above named, who may if they are so advised file a return to the same within ten days, whereupon the said petitioner shall have the right, if it be so advised, to file a reply to such return within five days after the service of the same.

R. C. Watts, Chief Justice.

Columbia, S. C., August 3, 1927.

We consent. John M. Daniel, Melton & Belser, Attys. for State of S. C.

A true copy. J. B. Westbrook, Clerk of the Supreme Court.

IN SUPREME COURT OF SOUTH CAROLINA

INTERVENTION PETITION OF COLUMBIA COLLEGE

To the Honorable Supreme Court of the State of South Carolina:

This petitior of the Columbia College, a corporation, by J. C. Guilds, its President, respectfully shows to the court:

[fol. 92] 1. That the petitioner, Columbia College, is a corporation of which the relator J. C. Guilds is President, and is an educational institution situate about three miles

to the north of the City of Columbia, having approximately 300 female students; that the said institution with its plant is situate on the street car line owned and formerly operated by the Columbia Railway, Gas & Electric Company and has been for many years and is now largely dependent upon the said railway line for transportation back and forth to the City of Columbia, and on information and belief that the said institution accepted and occupied its present location in the belief that it would be permanently served by such street car line, the late F. H. Hyatt, who gave the site for the institution, having also made substantial contributions of land and money toward the erection of the said railway line.

2. That beginning about the year 1925, or perhaps earlier, the Columbia Railway, Gas & Electric Company began to furnish and continued to furnish, inadequate and unsatisfactory street car service such as was calculated to discourage patronage, the cars in many cases having flat wheels and being leaky and otherwise being in a delapidated condition and the tracks were allowed to get so much out of repair that travel on the said railway was hardly safe; that the said Company in these and other ways appeared to discourage patronage.

3. That moreover during September, 1926 the relator went to see the Manager of said Railway Company at his office for the purpose of arranging to have the students of the said College transported back and forth to church on [fol. 93] Sunday during the academic session for such year, as had been customary in the past, but that the said Manager at such conference declined to have the Company carry such students to the City for the customary charge of five cents, and further said that the Company did not care for the patronage even at ten cents per fare, but preferred that the College should make other arrangements for such service, and that thereupon it became necessary for relator to make such arrangement with the bus company, which he thereafter did; that it was contemplated that approximately 200 girls would be transported back and forth from the City of Columbia every Sunday over this line if the said Company had accepted such offer of patronage or been willing to furnish the transportation service, but that the said

Company thereby by its own conduct discouraged such patronage and diverted the same to the said bus company; that no excuse was offered for such action by the said Manager except that the Company desired to be relieved of the obligation to operate street car service, on the alleged ground that same was unprofitable.

4. That in relator's opinion adequate street car service is essential to the welfare of the City of Columbia and its suburbs, and particularly of the Columbia College; that for many reasons no other form of transportation service is so satisfactory or can really replace the street car as a form of transportation and that the public interests, and particularly the said Columbia College, will suffer irreparable injury unless street car service is restored and the respondents above mentioned are required to resume and maintain adequate service for the public.

[fol. 94] Wherefore your petitioner prays to be allowed to intervene in this proceeding and that the relief prayed for in the petition herein be granted.

Melton & Belser, Attorneys for Petitioner.

(Duly verified by J. C. Guilds.)

In Supreme Court of South Carolina

Notice and Demurrer to Petition of Columbia College

To Messrs. Melton and Belser, attorneys for petitioner:

You will please take notice that on October 10th, 1927, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, the respondents above named will move the Supreme Court of South Carolina, in the Supreme Court room at Columbia, to vacate the order in the main cause, signed by Honorable R. C. Watts, Chief Justice, dated August 3rd, 1927, under which this intervention petition is filed, on the ground that such order prejudicially affects and undertakes to adjudicate material rights of the respondents herein and that the same was issued ex parte and without notice or hearing accorded to the respondents.

And failing in that, the respondents will demur to the intervention petition herein on the grounds:

1. That it appears upon the face of such petition that this Court has no jurisdiction over the persons of respondents, because

(a) The order under which this intervention petition is filed prejudicially affects material rights of the respondents, and was issued ex parte.

(b) That any right or cause of action that petitioners may have against respondents can be enforced only by the [fol. 95] commencement of an action by service of a summons, as provided in Sections 383 and 384 of the Code of Procedure.

2. That it appears upon the face of the petition that it does not state facts sufficient to constitute a cause of action or a cause of intervention, in that

(a) The intervention petition alleges no facts creating any legal duty or obligation on the part of respondents, or any of them, in favor of petitioners, to furnish street car service.

(b) The Attorney-General has no right or authority to enforce any right that intervening petitioners may have against respondents, the same, if any, being a private right.

(c) That the intervening petitioners have no right to join with the Attorney-General in the enforcement of any alleged public right set forth in the main petition, because such intervening petitioners have no right to present the public and have not suffered any peculiar or special damage or injury, differing in kind, as well as degree, from that suffered by the general public and resulting directly and immediately from the breach of any public duty, as alleged in the petition, so as to entitle intervening petitioners to a writ of mandamus.

(d) That intervening petitioners have a plain, adequate and complete remedy at law for the enforcement of any right that they may have against respondents, either by proceeding before the Railroad Commission under the Act of 1922, or by action at law, or in equity.

(e) That the intervening petitioners have no direct or immediate interest in the alleged public right claimed in the main petition, and seek by intervention to introduce an [fol. 96] additional right or cause of action entirely distinct and separate from the alleged right claimed in the main petition, creating a misjoinder of parties plaintiff, in violation of Section 360, and a misjoinder of causes of action, in violation of Section 430 of the Code of Procedure.

Elliott & McLain, J. B. S. Lyles, Attorneys for Respondents.

Columbia, S. C., September —, 1927.

We hereby certify that the above demurrer is meritorious and is not intended merely for delay.

W. C. McClain, J. B. S. Lyles, Attorneys for Respondents.

IN SUPREME COURT OF SOUTH CAROLINA

RETURN TO PETITION OF COLUMBIA COLLEGE

The respondents making return in accordance with the order of the Honorable R. C. Watts, Chief Justice, to the petition herein respectfully show that:

1. They have no knowledge or information sufficient to form a belief as to the truth of the allegations contained in said petition and therefore deny the same.

2. And further answering the petition and as a part thereof adopt the answer and return to the petition of the State of South Carolina as a part hereof, a copy of which is hereto attached.

Wherefore respondents pray that the petition be dismissed.

Elliott & McLain, Attorneys for Respondents.

(Duly verified by F. D. Campbell.)

[fol. 97] IN SUPREME COURT OF SOURH CAROLINA

INTERVENTION PETITION OF CHICORA COLLEGE

To the Honorable Supreme Court of the State of South Carolina:

The petitioner, the Board of Trustees of Chicora Col-

lege, a corporation, intervening in this proceeding by leave of this Court, respectfully shows:

1. That petitioner is a corporation duly created and existing under the laws of the State of South Carolina, and having and conducting an educational institution for young women in the City of Columbia, S. C., known as Chicora College for Women, which has approximately two hundred and fifty (250) students, and of which the said Dr. S. C. Byrd is President; and that such institution, its students and faculty are largely dependent upon an adequate system of public transportation for its best service to the State and community.

2. That several years ago during the year 1921, your petitioner purchased from Dr. William B. Burney a tract of land consisting of approximately fifty-four (54) acres, situate to the southeast of the City of Columbia along the Shandon Annex Street car line, for a large consideration, as a permanent site for the said institution; that a material factor which entered into the selection of the said site by your petitioner and affected the value thereof, was the fact that the said property was situated on the street car line belonging to respondent Companies over which the street car service was then being operated, and the belief on your petitioner's part that the said street car service would continue to be operated and to furnish said institution with adequate transportation service in accordance with the contract, which petitioner is informed and [fol. 98] believes exists between the respondent Columbia Railway, Gas & Electric Company and the said Dr. W. S. Burney from whom said property was purchased.

3. That in your petitioner's opinion adequate street car service is for many reasons the most desirable form of transportation for the City of Columbia and its environs, and particularly for your petitioner and its students, and this petitioner and the public generally will suffer irreparable injury unless the respondent Companies are compelled and required by this Honorbale Court to resume and maintain adequate street car service over its lines.

4. That this petitioner is familiar with the allegations contained in the main petition herein filed by the State of South Carolina, and is informed and believes that the said allegations are true and correct, and your petitioner desires to join in the said proceeding and in the prayer thereof.

Wherefore your petitioner prays that it be allowed to join in this proceeding and that the relief prayed for in the main petition herein be granted, and that the respondent Companies be required to restore and maintain adequate street car service in the City of Columbia.

Melton & Belser, Attorneys for Petitioner.

Columbia, S. C., September 7, 1927.

(Duly verified by S. C. Byrd.)

[fol. 99] In Supreme Court of South Carolina

Notice and Demurrer to Petition of Chicora College

Messrs. Melton & Belser, attorneys for petitioner.

You will please take notice that on October 10, 1927, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, the respondents above named will move the Supreme Court of South Carolina, in the Supreme Court room at Columbia, to vacate the order in the main cause, signed by Honorable R. C. Watts, Chief Justice, dated August 3, 1927, under which this intervention petition is filed, on the ground that such order prejudicially affects and undertakes to adjudicate material rights of the respondents herein and that the same was issued ex parte and without notice or hearing accorded to the respondents.

And failing in that, the respondents will demur to the intervention petition herein on the grounds:

1. That it appears upon the face of such petition that this Court has no jurisdiction over the persons of respondents, because

(a) The order under which this intervention petition is filed prejudicially affects material rights of the respondents and was issued without notice or hearing accorded respondents.

(b) That any right or cause of action that petitioner may have against respondents can be enforced only by the commencement of an action by service of a summons, as provided in Sections 383 and 384 of the Code of Procedure.

2. That it appears upon the face of the petition that it does not state facts sufficient to constitute a cause of action or a cause of intervention, in that

[fol. 100] (a) The intervention petition alleges no facts creating any legal duty or obligation on the part of respondents, or any of them, in favor of petitioner, to furnish street car service.

(b) The Attorney-General has no right or authority to enforce any right that intervening petitioner may have against respondents, the same, if any, being a private right.

(c) That the intervening petitioner has no right to join with the Attorney-General in the enforcement of any alleged public right set forth in the main petition, because such intervening petitioner has no right to represent the public and has not suffered any peculiar or special damage or injury, differing in kind, as well as degree, from that suffered by the general public and resulting directly and immediately from the breach of any public duty, as alleged in the petition, so as to entitle intervening petitioner to a writ of mandamus.

(d) That intervening petitioner has a plain, adequate and complete remedy at law for the enforcement of any right that he may have against respondents, either by proceeding before the Railroad Commission under the Act of 1922, or by action at law, or in equity.

(e) That the intervening petitioner has no direct or immediate interest in the alleged public right claimed in the main petition, and seeks by intervention to introduce an additional right or cause of action entirely distinct and

separate from the alleged right cliamed in the main petition, creating a misjoinder of parties plaintiff, in violation of Section 360, and a misjoinder of causes of action, [fol. 101] in violation of Section 430 of the Code of Procedure.

Elliott & McLain, J. B. S. Lyles, Attorneys for Respondents.

Columbia, S. C., September 16, 1927.

We hereby certify that the above demurrer is meritorious and is not intended merely for delay.

W. C. McLain, J. B. S. Lyles, Attorneys for Respondents.

IN SUPREME COURT OF SOUTH CAROLINA

RETURN AND ANSWER TO PETITION OF CHICORA COLLEGE

The respondents, expressly reserving and not waiving their right to insist upon their motion to vacate and demurrer, notice of which is heretofore served, by way of further return and answer to the intervention petition, respectfully show:

1. Admit the allegations of Paragraph one, except that they deny any allegation that such institution, its students and faculty are largely dependent upon street railway service to be furnished by any of the respondents.

2. Upon information and belief, admit the purchase of the tract of land alleged in Paragraph two, but deny that the location of the same, with reference to the street car line, was a material factor entering into the selection of the site or affecting the value thereof, and further deny that the respondent companies, or any of them, own the street car line in question. Specifically deny upon knowl- [fol. 102] edge that there was any contract as to the operation of said street car line between the respondent, Columbia Railway, Gas & Electric Company, and Dr. W. B. Burney or any other person. And further allege that any belief that petitioner might have had as to the operation of said line by any of the respondents was without founda-

tion in fact. And further allege that petitioner has not built the institution, and, upon information and belief, allege that it is doubtful whether the institution will ever be built.

3. In answer to Paragraph three, deny knowledge or information sufficient to form a belief as to petitioner's opinion concerning adequate street car service but deny that it is the most desirable form of transportation, as therein alleged, and deny the other allegations of said paragraph.

4. Deny knowledge or information sufficient to form a belief as to the allegations of Paragraph four.

5. By way of further return and answer, deny that any of the respondents are under any duty or obligation whatsoever, of any kind or character, to operate any street car service whatsoever for the benefit of petitioner or any one else, and allege that any order requiring any of the respondents to furnish street car service would require such service to be furnished at a tremendous loss, considering operating expenses alone, and without consideration of any other charges or any return upon the investment, and would confiscate the property of such respondent and deprive it of its property without due process of law and deny to it the equal protection of the laws, in violation of the Fourteenth Amendment of the Constitution of the United [fol. 103] States and Section 5 of Article 1 of the Constitution of South Carolina.

Elliott & McLain, J. B. S. Lyles, Attorneys for Respondents.

Columbia, S. C., September 16, 1927.

(Duly verified by F. D. Campbell.)

IN SUPREME COURT OF SOUTH CAROLINA

INTERVENTION PETITION OF SCHOOL BOARD OF CITY OF COLUMBIA

To the Honorable Supreme Court of the State of South Carolina:

This petition of the School Board of the School District of the City of Columbia intervening in this proceeding by leave of this Honorable Court, respectfully shows:

1. That your petitioner, the School District of the City of Columbia, is a body politic duly created and existing under the laws of the State of South Carolina, and as such charged by law with the duty and responsibility of supervising the educational system and facilities for the children of the City of Columbia, such children at the present time numbering approximately Seven Thousand; and that your relators, A. C. Moore, Chairman, F. C. Withers, Dr. S. F. Killingsworth, Dr. J. Heyward Gibbes, Claude P. Davis, D. W. Roof, and S. M. Busby, are the duly elected and acting Commissioners of such School District.

2. That in the opinion of the relators above named, an adequate street car system is for many reasons and by far the most desirable form of transportation service for the [fol. 104] City of Columbia and its environs, and particularly for this petitioner's purpose for furnishing a safe and reliable means of transporting the school children back and forth to the school, and that the school problem in the City of Columbia has been and is now tremendously increased and rendered more difficult by the lack of adequate or satisfactory transportation system; that your relators are informed and believe that the respondent Companies are under a public obligation and duty to the City of Columbia and its citizens to render and provide such street car service for the City of Columbia and for its citizens.

3. That your petitioner and the relators above mentioned are familiar with the allegations of the main petition filed by the State of South Carolina herein, and are informed and believe that such allegations are true and correct, and desire to join therein, and further allege that the public generally and the petitioner particularly will suffer irreparable injury unless the respondent Companies are required to restore and maintain an adequate street car service and system throughout the City of Columbia and its environs in accordance with their public duties and obligations; and that the school of the City of Columbia, and particularly the junior high schools are so situated that a safe and reliable system of public transportation is abso-

lutely necessary for the proper working of the school system.

Wherefore your petitioner prays that it be allowed to join in this proceeding and that the relief prayed for therein be granted, and that the respondent Companies be required to restore and maintain adequate street car service in the City of Columbia.

Melton & Belser, Attorneys for Petitioners.

Columbia, S. C., 8 September, 1927.

(Duly verified by F. C. Withers.)

[fol. 105] In Supreme Court of South Carolina

Notice and Demurrer to Petition of School Board

To Messrs. Melton and Belser, attorneys for petitioners:

You will please take notice that on October 10th, 1927, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, the respondents above named will move the Supreme Court of South Carolina, in the Supreme Court room at Columbia, to vacate the order in the main cause, signed by Honorable R. C. Watts, Chief Justice, dated August 3rd, 1927, under which this intervention petition is filed, on the ground that such order prejudicially affects and undertakes to adjudicate material rights of the respondents herein and that the same was issued ex parte and without notice or hearing accorded to the respondents.

And failing in that, the respondents will demur to the intervention petition herein on the grounds:

1. That it appears upon the face of such petition that this Court has no jurisdiction over the persons of respondents, because

(a) The order under which this intervention petition is filed prejudicially affects material rights of the respondents and was issued without notice or hearing accorded respondents.

(b) That any right or cause of action that petitioners may have against respondents can be enforced only by the commencement of an action by service of a summons, as provided in Sections 383 and 384 of the Code of Procedure.

2. That it appears upon the face of the petition that it does not state facts sufficient to constitute a cause of action or a cause of intervention, in that

[fol. 106] (a) The intervention petition alleges no facts creating any legal duty or obligation on the part of respondents, or any of them, in favor of petitioners, to furnish street car service.

(b) The Attorney-General has no right or authority to enforce any right that intervening petitioners may have against respondents, the same, if any, being a private right.

(c) That the intervening petitioners have no right to join with the Attorney-General in the enforcement of any alleged public right set forth in the main petition, because such intervening petitioners have no right to represent the public and have not suffered any particular or special damage or injury, differing in kind, as well as degree, from that suffered by the general public and resulting directly and immediately from the breach of any public duty, as alleged in the petition, so as to entitle intervening petitioners to a writ of mandamus.

(d) That intervening petitioners have a plain, adequate and complete remedy at law for the enforcement of any right that they may have against respondents, either by proceeding before the Railroad Commission under the Act of 1922, or by action at law, or in equity.

(e) That the intervening petitioners have no direct or immediate interest in the alleged public right claimed in the main petition, and seek by intervention to introduce an additional right or cause of action entirely distinct and separate from the alleged right claimed in the main petition, creating a misjoinder of causes of action, in violation of Section 430 of the Code of Procedure.

(f) That under the statutory authority created petitioners as a body politic and corporate have no power or au-
[fol. 107] thority to intervene in this cause nor to divert

from proper school purposes any funds for the payment of any costs which may be incurred in this action.

Elliott & McLain, J. B. S. Lyles, Attorneys for Respondents.

Columbia, S. C., September 17th, 1927.

We hereby certify that the above demurrer is meritorious and is not intended merely for delay.

W. C. McLain, J. B. S. Lyles.

IN SUPREME COURT OF SOUTH CAROLINA

RETURN AND ANSWER TO PETITION OF SCHOOL BOARD

The respondents, expressly reserving and not waiving their right to insist upon their motion to vacate and demurrer, notice of which has been heretofore served, by way of further return and answer to the intervention petition, respectfully show:

1. Admit on information and belief the allegations of Paragraph one of the petition.

2. Have no knowledge or information sufficient to form a belief as to what is or is not the opinion of the petitioners with regard to street car service in the City of Columbia as alleged in Paragraph two of the petition, and with reference to the allegation that the school problem in the City of Columbia has been tremendously increased and rendered more difficult by the lack of adequate transportation, respondents allege that this problem if there be such a one, is a problem to be met by the parents of the children [fol. 108] attending the city schools and not by the school trustees, and respondents further allege that any belief which petitioners may have as to any obligation and duty on the part of respondents, or any of them, to provide street car service for the City of Columbia is without foundation in fact.

3. With reference to the allegations of Paragraph three respondents deny that the public generally, or the petitioners herein, will suffer an irreparable injury unless the respondent companies are required to restore and main-

tain street car service in the City of Columbia, or that the schools of the City of Columbia are so situated as to require respondent companies to provide a system of public transportation, and with reference to the allegation of the necessity for such transportation in regard to the junior high school, allege on information and belief that the location of said school was not selected by unanimous vote of the Board constituted by petitioner, and that it was located over the vigorous and emphatic protest of a majority of the patrons of said junior high school principally for the reason that said School Board had arbitrarily located said junior high school in an inaccessible section of the City of Columbia.

4. And by way of further return and answer respondents allege on information and belief that the act of the Petitioner F. C. Withers in presenting the petition herein for intervention was without proper authority or resolution of said Board of Commissioners, and was beyond the powers and duties of said Board, and respondents also deny that any of the respondents are under any duty or obligation whatsoever, of any kind or character, to operate any street [fol. 109] car service whatsoever for the benefit of petitioners or anyone else, and allege that any order requiring any of the respondents to furnish street car service would require such service to be furnished at a tremendous loss, considering operating expenses alone, and without consideration of any other charges or any return upon the investment, and would confiscate the property of such respondent and deprive it of its property without due process of law and deny to it the equal protection of the laws, in violation of the Fourteenth Amendment of the Constitution of the United States and Section 5 of Article 1 of the Constitution of South Carolina.

Elliott & McLain, J. B. S. Lyles, Attorneys for Respondents.

Columbia, S. C., September 16th, 1927.

(Duly verified by F. D. Campbell.)

IN SUPREME COURT OF SOUTH CAROLINA

ORDER ALLOWING TOWN OF EAU CLAIRE TO INTERVENE

This matter coming before the court upon the duly verified application of the Town of Eau Claire to be allowed to intervene in this proceeding and to be made a party thereto, now with the consent of the attorneys for the State of South Carolina,

It is hereby ordered and adjudged that the said petitioner, the Town of Eau Claire, be and hereby is allowed to join in this proceeding and to be made a party thereto.

It is further ordered that a copy of this order, together with a copy of this petition, be forthwith served upon the respondents above named, who may if they are so advised [fol. 110] file a return to the same within ten days, whereupon the said petitioner shall have the right, if it be so advised, to file a reply to such return within five days after the service of the same.

R. C. Watts, Chief Justice.

Columbia, S. C., 3 August, 1927.

We consent. John M. Daniel, Melton & Belser, Attorneys for State of South Carolina.

A true copy. J. B. Westbrook, Clerk of the Supreme Court.

IN SUPREME COURT OF SOUTH CAROLINA

INTERVENTION PETITION OF TOWN OF EAU CLAIRE

To the Honorable Supreme Court of the State of South Carolina:

This petition of the Town of Eau Claire, by C. F. Hoefer, Mayor, R. S. Coleman, E. C. Goza, W. W. Fulmer, J. R. Mercer, Alvin Hook and W. M. Addison, Councilmen of said Town, relators, respectfully shows to the Court:

1. That the Town of Eau Claire is a municipal corporation created and existing under the laws of the State of South Carolina, and that the relators, C. F. Hoefer, Mayor,

R. S. Coleman, E. C. Goza, W. W. Fulmer, J. R. Mercer, Alvin Hook and W. M. Addison, Councilmen, are duly elected officers of said Town and as such charged with the [fol. 111] administration of the affairs thereof, and that the said Town is situated about two or three miles to the north of the City of Columbia, and has a population of approximately six thousand inhabitants, of whom the bulk live in the portion of said Town known as the old Hyatts tract section, the remaining portion living in the section known as Colonial Heights.

2. That the portion of said town formerly known as the Hyatts Park section was largely built up and developed by the late F. H. Hyatt and 'Columbia and Eau Claire Electric Railway Company'; that the said Electric Railway Company had been chartered on the 25th day of May, 1896 for the purpose and with the power to build and operate an electric and suburban railway out of Columbia and to improve and sell suburban real estate and generally to do a land improvement business (see charter thereof recorded in the office of the Clerk of Court for Richland County in Corporation Book "A," page 63), the said charter rights and privileges to run in perpetuity; that the said company did thereafter, in pursuance of its charter and powers, build and operate an electric railway line from Elmwood Avenue in the City of Columbia northward to the old Hyatts Park Pavilion and for such purpose acquired rights of way and other contributions from various citizens with the understanding that the said Street Railway line would be continuously and permanently operated and maintained for the purpose of furnishing transportation back and forth to the City of Columbia; that the said Columbia & Eau Claire Electric Railway Company also proceeded to and did sell a considerable quantity of real estate to various of the present [fol. 112] citizens of the said community or their predecessors in title while the said street car line was running, and who relied upon the continued operation of the said street car line in purchasing homes and settling in the said community; that thereafter the said Columbia & Eau Claire Electric Railway Company transferred and conveyed all of its rights, property and assets of every kind and nature whatsoever to the respondent Columbia Railway, Gas & Electric Company (or its predecessor in name) which there-

upon became subject to all the rights and liabilities of the said Columbia & Eau Claire Electric Railway Company, and particularly the obligation to maintain and operate said electric line as long as required by the public.

3. On information and belief that the portion of the Town known as Colonial Heights was largely built up and developed by the Suburban Homes Company and its subsidiary, the Suburban Transit Company; that the said Suburban Transit Company was chartered about the year 1907 in perpetuity for the purpose of building an electric street car line from the City of Columbia where it connected at the intersection of Bull and Laurel Streets with the line of the Columbia Railway, Gas and Electric Company, to the property then being developed by the said Suburban Homes Company, about two or three miles to the northeast of the said city, and said Transit Company had acquired from the City of Columbia on or about the 9th day of April 1907 a franchise to operate the said Electric Street Railway along Bull Street and to erect the necessary poles and wires therefor subject to all the City ordinances affecting electric street railways and subject to the express agreement and condition that the passenger fare on the said railway [fol. 113] should never exceed five cents, and that the said Company should conform to all the regulations and ordinances of the said City of Columbia (Revised Ordinances 1920, Sec. 608-12); that the said Suburban Transit Company did build and operate said Electric Street Railway line from the City of Columbia to the said Colonial Heights and at the same time the said Suburban Homes Company sold considerable property to the present inhabitants thereof, or their predecessors in title, with the representation and assurance that the said street car line would be established and would furnish transportation back and forth to the said City of Columbia, and that most of the present inhabitants of the said community, or their predecessors in title, bought their homes in said community with the understanding and in reliance upon the belief that the said railway line would be operated permanently for the benefit of such inhabitants and that, as this petitioner is informed and believes, such building and operation of the street car line by the said Transit Company was intended to be and was primarily for the benefit of the settlers of such com-

munity of Colonial Heights and of the public generally; that the said Suburban Transit Company thereafter on or about the 13th day of June 1912 (book of deeds "BA," page 396) transferred all of its rights, property and other assets to the respondent Columbia Railway, Gas and Electric Company, which thereupon became charged with all the debts and liabilities of the said Suburban Transit Company; that the said property, rights and assets of the said Transit Company, which had cost approximately Twenty Thousand ($20,000.00) Dollars, was transferred to and accepted by the said Columbia Railway, Gas and Electric Company primarily as a contribution to the said Railway, [fol. 114] Gas & Electric Company and for the purpose of furnishing and assuring to the inhabitants of said Colonial Heights section permanent street car transportation back and forth to the City of Columbia.

4. That thereafter the said Columbia Railway, Gas & Electric Company, ever since the establishment of the said communities and down to about the year 1925, exercised and enjoyed the franchise of furnishing to the inhabitants of the said towns public utilities of electric light, power and railway service and throughout such period have used the same poles in large part to carry the electric light wires by which light was furnished to the buildings and streets of the said towns and also the trolley wires to carry the power to operate said street car line; that such enjoyment of said franchise by said Railway, Gas & Electric Company was permitted by the said town and by its inhabitants by and with the understanding that all the said public utilities would continue to be furnished by said company as long as they were required or demanded by the said town or its inhabitants.

5. That, as your petitioners are informed and believe, about the year 1924 or 1925 at the time when the Barstow interests acquired control of the stock of the respondent Columbia Railway, Gas & Electric Company and thereafter in 1925 had the same transferred to the respondent Broad River Power Company the said respondent companies in pursuance of their scheme to escape the obligation to operate the street car service instituted a systematic campaign to make the public believe that the said street car company could not be operated except at a heavy financial loss;

in pursuance of which campaign the said companies had their Manager Woodring appear before your relators as [fol. 115] the Town Council of Eau Claire and urge them to permit the said bus company to operate in the said town, the said Woodring concealing the real purpose of his conduct, but on the contrary assuring these relators that the street car service would not be prejudiced but that competition was the life of trade; that moreover the said Woodring as Manager of the respondent companies during the year 1926 endeavored to and did enlist the cooperation and assistance of certain of the citizens of the said Town of Eau Claire in the effort to secure permission from the Railroad Commission to discontinue street car service on certain lines in the City of Columbia which he represented were unprofitable upon the spacious ground and representation that if the companies could be relieved from such unprofitable lines the said Companies would be able to and would continue permanently without controversy the operation of the lines running into the said Town of Eau Claire, which he represented were profitable and paying lines; that the said Companies thereafter continued to give increasingly inadequate street car service to discourage patronage until they finally undertook to and did completely discontinue all street car service in March 1927.

6. That the attempted separation of the properties of the said Columbia Railway, Gas & Electric Company, and transfer of its assets to the Broad River Power Company in 1925, was made without the consent or approval of the said Town of Eau Claire and, as relators are informed and believe, was for the express purpose of evading the obligation of the said company to operate street car service and was null and void, and that the said two companies have continued to exercise and enjoy the franchise for disposing of electric light and power in the said Town of Eau Claire [fol. 116] and to utilize for such purpose the same poles for carrying the electric light wires for furnishing light to the said town and its inhabitants, for which payment is now demanded in the name of the Broad River Power Company, and for carrying the trolley wires which were formerly used in the operation of the street cars, which are alleged to belong to the said Columbia Railway, Gas & Electric Company.

7. That the attempted abandonment by the respondent companies in March 1927 of the said street car system and the discontinuance of the operation of said street car service were and are highly prejudicial to the said Town of Eau Claire and all the inhabitants thereof, without their consent and over their emphatic protest and, as your relators are informed and believe, unjustified, illegal and against their contract rights; that most of the inhabitants of the said town are people in moderate circumstances, most of whom have to come back and forth to the City of Columbia for their work or like purposes daily, and that they are dependent upon said street car service for transportation back and forth to the said City, and that they are now without any adequate or satisfactory means of transportation; that the property values in said town are and will continue to be greatly depreciated unless the street car service is restored, and that the said town and all its inhabitants will suffer irreparable injury unless the respondents herein are required to restore and maintain adequate street car service on the street car lines running through the said town.

8. That your relators are informed and believe that all the allegations contained in the petition herein of the State [fol. 117] of South Carolina are true and correct; that the relief therein prayed for should be granted, and these petitioners desire to be made party to such proceeding.

Wherefore this petitioner, the Town of Eau Claire, prays to be allowed to join and intervene in this proceeding, and that the relief prayed for in the main petition herein be granted.

H. N. Elmunds, Melton & Belser, Attorneys for Town of Eau Claire, Petitioner.

Columbia, S. C., August 2, 1927.

(Duly verified by C. F. Hoefer.)

IN SUPREME COURT OF SOUTH CAROLINA

NOTICE AND DEMURRER TO PETITION OF TOWN OF EAU CLAIRE

To Messrs. Melton and Belser, attorneys for petitioners:

You will please take notice that on October 10th, 1927, at ten o'clock in the forenoon, or as soon thereafter as counsel

can be heard, the respondents above named will move the Supreme Court of South Carolina, in the Supreme Court room at Columbia, to vacate the order in the main cause, signed by Honorable R. C. Watts, Chief Justice, dated August 3rd, 1927, under which this intervention petition is filed, on the ground that such order prejudicially affects and undertakes to adjudicate material rights of the respondents herein and that the same was issued ex parte and without notice or hearing accorded to the respondents.

[fol. 118] And faling in that, the respondents will demur to the intervention petition herein on the grounds:

1. That it appears upon the face of such petition that this Court has no jurisdiction over the persons of respondents, because,

(a) The order under which this intervention petition is filed prejudicially affects material rights of the respondents was issued ex parte.

(b) That any right or cause of action that petitioners may have against respondents can be enforced only by the announcement of an action by service of a summons, as provided in Sections 383 and 384 of the Code of Procedure.

2. That it appears upon the face of the petition that it does not state facts sufficient to constitute a cause of action or a cause of intervention, in that

(a) The intervention petition alleges no facts creating any legal duty or obligation on the part of respondents, or any of them, in favor of petitioners, to furnish street car service.

(b) The Attorney-General has no right or authority to enforce any right that intervening petitioners may have against respondents, the same, if any, being a private right.

(c) That the intervening petitioners have no right to join with the Attorney-General in the enforcement of any alleged public right set forth in the main petition, because such intervening petitioners have no right to represent the public and have not suffered any peculiar or special damage or injury, differing in kind, as well as degree, from that suffered by the general public and resulting directly and immediately from the breach of any public duty, as alleged

[fol. 119] in the petition, so as to entitle intervening petitioners to a writ of mandamus.

(d) That intervening petitioners have a plain, adequate and complete remedy at law for the enforcement of any right that they may have against respondents, either by proceeding before the Railroad Commission under the Act of 1922, or by action at law, or in equity.

(e) That the intervening petitioners have no direct or immediate interest in the alleged public right claimed in the main petition, and seek by intervention to introduce an additional right or cause of action entirely distinct and separate from the alleged right claimed in the main petition, creating a misjoinder of parties plaintiff, in violation of Section 360, and a misjoinder of causes of action, in violation of Section 430 of the Code of Procedure.

(f) That it does not appear upon the face of the petition herein that the respondents or any of them has any franchise or other right from petitioners to use the streets of the said municipality for the operation of its street railway.

Elliott & McLain, J. B. S. Lyles, Attorneys for Respondents.

Columbia, S. C., September —, 1927.

We hereby certify that the above demurrer is meritorious and is not intended merely for delay.

W. C. McLain, J. B. S. Lyles, Attorneys for Respondents.

[fol. 120] In Supreme Court of South Carolina

Return and Answer to Petition of Town of Eau Claire

The respondents making return in accordance with the order of the Honorable R. C. Watts, Chief Justice, to the petition herein respectfully show that:

1. They admit the allegations of Paragraph 1 of the petition.

2. They admit the allegations of Paragraph 2 of the petition, except the allegations that there was any under-

standing that the said street railway line would be continuously and permanently operated, or that Columbia Railway, Gas and Electric Company, or Columbia and Eau Clair Electric Railway Company, are, or ever were, under obligations to maintain and operate said electric line as long as required by the public.

3. They have no knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 3, and therefore deny the same.

4. They deny the allegations of Paragraphs 4 and 5.

5. They deny the allegations of Paragraph 6, except the allegation that the alleged transfer was without the approval of the Town of Eau Claire and that in certain cases the same poles for carrying electric light wires and trolley wires were used.

6. They deny the allegations of Paragraph 7 of the petition.

7. And further answering the petition and as a part thereof adopt the answer and return to the petition of the State of South Carolina as a part hereof, a copy of which is hereto attached.

[fol. 121] Wherefore respondents pray that the petition be dismissed.

Elliott & McLain, Attorneys for Respondents.

(Duly verified by E. D. Campbell.)

IN SUPREME COURT OF SOUTH CAROLINA

ORDER ALLOWING TOWN OF ARDEN TO INTERVENE

This matter coming before the court upon the duly verified application of the Town of Arden to be allowed to intervene in this proceeding and to be made a party thereto, now with the consent of the attorneys for the State of South Carolina,

It is hereby

Ordered and adjudged that the said petitioner the Town of Arden be and hereby is allowed to join in this proceeding and to be made a party thereto.

It is further ordered that a copy of this Order, together with a copy of this petition, be forthwith served upon the respondents above named, who may if they are so advised file a return to the same within ten days, whereupon the said petitioner shall have the right, if it be so advised, to file a reply to such return within five days after the service of the same.

R. C. Watts, Chief Justice.

Columbia, S. C., 3 August, 1927.

We consent. John M. Daniel, Melton & Belser, Attorneys for the State of South Carolina.

A true copy. J. B. Westbrook, Clerk of the Supreme Court.

[fol. 122] In Supreme Court of South Carolina

Intervention Petition of Town of Arden

To the Honorable Supreme Court of the State of South Carolina:

This petition of the Town of Arden, by U. L. Rast, Mayor, M. B. Horne, Q. L. Shealy, L. N. Koon and J. A. Nickels, Councilmen, respectfully shows to the court:

1. That the Town of Arden is a municipal corporation created and existing under the laws of the State of South Carolina, and that the relators U. L. Rast, as Mayor, M. B. Horne, Q. L. Shealy, L. N. Koon and J. A. Nickels, as Councilmen, are the duly elected officers of the said Town thereof, and as such charged with the administration of the affairs of the said Town; that the said Town is situated about three miles to the north of the City of Columbia and has a population of approximately 1,800 inhabitants.

2. That the said Town of Arden is situated largely on property formerly belonging to the North Carolina Land Company and was built up principally along the street car

line, which was, as this petitioner is informed and believes, constructed by the said North Columbia Land Company and the Columbia Railway, Gas and Electric Company about the years 1905 or 1906 under a contract by which the said Railway, Gas and Electric Company agreed to operate the street cars along such line and to furnish regular transportation back and forth from said property to the City of Columbia in perpetuity; that the existence of the said contract between the said North Columbia Land Company and the said Railway, Gas & Electric Company was well known to the inhabitants of the said Town when they purchased their homes from the said North Columbia Land Company and settled in the said community, and that such [fol. 123] inhabitants in so purchasing their homes relied upon the continued operation of the said street car service in accordance with the said contract in perpetuity.

3. That moreover the said Columbia Railway, Gas and Electric Company has ever since the establishment of the said community and since the incorporation of the said Town, and down to about the year 1925 exercised and enjoyed the franchise of furnishing to the inhabitants of such Town the public utilities of electric lights, power and railway service, and throughout such period have used the same poles to carry the electric light wires by which light was furnished to the buildings and the streets of the said Town and also the trolley wires which carried the power to operate the said street car lines; that such enjoyment of the said franchise by the said Railway, Gas and Electric Company was permitted by the said Town and its inhabitants, by and with the understanding that all the said public utilities would continue to be furnished by the said Company as long as they were required or demanded by the said Town or its inhabitants.

4. That beginning about the year 1925, or perhaps a year or two earlier, the said Railway, Gas and Electric Company began to furnish and continued to furnish until the abandonment as hereinbelow mentioned, inadequate and unsatisfactory street car service, and by the character of such service and the condition of its equipment—the cars being in many cases leaky and having broken windows and flat wheels and the road bed being in an unsafe condition—ap-

peared to discourage patronage and in other ways to manifest a desire to escape the obligation to operate the said street car system; that the attempted separation of the properties of the said Columbia Railway, Gas and Electric [fol. 124] Company and a transfer of all the more valuable portion of its assets to the Broad River Power Company in 1925 was done without the consent or approval of the said Town of Arden, and as relators are informed and believe, was for the express purpose of evading the obligation of the said Company to operate the said street car system and was null and void; and that the said two companies have continued to utilize the same poles for carrying the electric light wires for furnishing light to the said Town and its inhabitants, for which payment was demanded in the name of the Broad River Power Company, and for carrying the trolley wires which were used in the operation of the street cars, which were alleged to belong to the said Columbia Railway, Gas and Electric Company.

5. That the attempted abandonment by the Columbia Railway, Gas and Electric Company in March 1927 of the operation of the said street car system, was and is, highly prejudicial to the said Town of Arden and all the inhabitants thereof, and was without their consent and over their vigorous protests, and as your relators are informed and believe, utterly unjustified and illegal and against their contract rights; that most of the inhabitants of the said Town are people in moderate circumstances, many of them being laboring people who have to come back and forth to the City of Columbia to their work daily, and that they are without any adequate or satisfactory means of transportation to the said City; that property values in the said Town are and will continue to be greatly depreciated unless the said street car service is restored, and that the said Town and all of its inhabitants will suffer irreparable injury unless the respondents herein are compelled and required by the order of this court to restore and maintain adequate [fol. 125] street car service on the said street car line running through the said Town.

6. That your relators are informed and believe that all the allegations contained in the main petition herein by the State of South Carolina are true and correct, and the relief

therein prayed for should be granted, and this petitioner desires to be made a party to such proceedings.

Wherefore this petitioner, the Town of Arden, prays to be allowed to join and intervene in this proceedings, and that the relief prayed for in the main petition herein be granted.

(Sgd.) Nelson & Mullins, Melton & Belser.

Columbia, S. C., August 1, 1927.

(Duly verified by U. L. Rast).

IN SUPREME COURT OF SOUTH CAROLINA

NOTICE AND DEMURRER TO PETITION OF TOWN OF ARDEN

To Messrs. Melton and Belser, attorneys for petitioners:

You will please take notice that on October 10th, 1927, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, the respondents above named will move the Supreme Court of South Carolina, in the Supreme Court room at Columbia, to vacate the order in the main cause, signed by Honorable R. C. Watts, Chief Justice, dated August 3rd, 1927, under which this intervention petition is filed, on the ground that such order prejudicially affects and undertakes to adjudicate material rights of the respondents [fol. 126] herein and that the same was issued ex parte and without notice or hearing accorded to the respondents.

And failing in that, the respondents will demur to the intervention petition herein on the grounds:

1. That it appears upon the face of such petition that this Court has no jurisdiction over the persons of respondents, because

(a) The order under which this intervention petition is filed prejudicially affects material rights of the respondents, and was issued ex parte.

(b) That any right or cause of action that petitioners may have against respondents can be enforced only by the

commencement of an action by service of a summons, as provided in Sections 383 and 384 of the Code of Procedure.

2. That it appears upon the face of the petition that it does not state facts sufficient to constitute a cause of action or a cause of intervention, in that

(a) The intervention petition alleges no facts creating any legal duty or obligation on the part of respondents, or any of them, in favor of petitioners, to furnish street car service.

(b) The Attorney-General has no right or authority to enforce any right that intervening petitioners may have against respondents, the same, if any, being a private right.

(c) That the intervening petitioners have no right to join with the Attorney-General in the enforcement of any alleged public right set forth in the main petition, because such intervening petitioners have no right to represent the public and have not suffered any peculiar or special damage or injury, differing in kind, as well as degree, from that [fol. 127] suffered by the general public and resulting directly and immediately from the breach of any public duty, as alleged in the petition, so as to entitle intervening petitioners to a writ of mandamus.

(d) That intervening petitioners have a plain, adequate and complete remedy at law for the enforcecent of any right that they may have against respondents, either by proceeding before the Railroad Commission under the Act of 1922, or by action at law, or in equity.

(e) That the intervening petitioners have no direct or immediate interest in the alleged public right claimed in the main petition, and seek by intervention to introduce an additional right or cause of action entirely distinct and separate from the alleged right claimed in the main petition, creating a misjoinder of parties plaintiff, in violation of Section 360, and a misjoinder of causes of action, in violation of Section 430 of the Code of Procedure.

(f) That it does not appear upon the face of the petition herein that the respondents or any of them has any fran-

chise or other right from petitioners to use the streets of the said municipality for the operation of its street railway.

Elliott & McLain, J. B. S. Lyles, Attorneys for Respondents.

Columbia, S. C., September —, 1927.

We hereby certify that the above demurrer is meritorious and is not intended merely for delay.

W. C. McLain, J. B. S. Lyles, Attorneys for Respondents.

[fol. 128] In Supreme Court of South Carolina

Return and Answer to Petition of Town of Arden

The respondents making return in accordance with the order of the Honorable R. C. Watts, Chief Justice, to the petition herein respectfully show that:

1. They admit the allegations of Paragraph 1.

2. Have no knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 2 of the petition except the allegations that a street car line in said town was constructed by the North Columbia Land Company and Columbia Railway, Gas and Electric Company or its predecessor, and that there was a contract between said predecessor or Columbia Railway, Gas and Electric Company and North Columbia Land Company, but deny specifically that said contract was for the perpetual operation of street cars.

3. Admit with reference to the allegation of Paragraph 3 that Columbia Railway, Gas and Electric Company has for a number of years furnished electric light, power and railroad service in the Town of Arden, but deny that said town ever granted a franchise therefor, or that said furnishing of said public utility services was with any understanding whatsoever as to length of time such services would be furnished.

4. Deny the allegations of Paragraph 4 of the petition except the allegation that the alleged transfer of assets was without the approval of the said Town of Arden, and the allegation that in some instances the same poles have

been used for supporting trolley wires and electric light wires.

5. Deny the allegations of Paragraph 5.

[fol. 129] 6. And further answering the petition and as a part thereof adopt the answer and return to the petition of the State of South Carolina as a part thereof, a copy of which is hereto attached.

Wherefore respondents pray that the petition be dismissed.

Elliott & McLain, Attorneys for Respondents.

(Duly verified by F. D. Campbell.)

[fol. 130] In Supreme Court of South Carolina, Original Jurisdiction, Fall Term, 1927

No. 167

Ex Parte: State of South Carolina Ex Relatione John M. Daniel, Attorney General, Petitioner,

v.

Broad River Power Co. et al., Respondents

Order of Reference

It appearing that there are disputed questions of fact in this case and a controversy as to the completeness of certain documentary evidence submitted by the petitioner,

It is Ordered—That all issues of law and fact in this proceeding be referred to L. D. Lide, Esq., as Special Referee who shall take the testimony and report his conclusions to this Court with convenient speed.

The respondents contest the validity of the orders allowing certain interested parties to intervene, as having been made without notice to them. The orders were taken in open Court, in the presence of the attorneys for the respondents who interposed no objection thereto. The intervenors are therefore properly before the Court.

The Special Referee is directed to employ a stenographer to take testimony, whose compensation, recommended by

him, and his own approval by this Court, shall be taxed as costs of the case.

T. P. Cothran (A. J.), Eugene S. Blease (A. J.), John G. Stabler (A. J.), Jesse F. Carter (A. J.).

Columbia, S. C., January 11th, 1928.

[fol. 131] In United States District Court, Eastern District of South Carolina

In Bankruptcy. No. —

In the Matter of Columbia Railway, Gas and Electric Company, Bankrupt

Order Granting Stay

The above named bankrupt having duly filed its petition in bankruptcy on the 24th day of January, 1928, praying that it be adjudicated a voluntary bankrupt, and application having been made for an order staying further proceedings in a certain suit pending in the Supreme Court of South Carolina entitled Ex Parte: State of South Carolina, ex Relatione John M. Daniel, Attorney General, et al., vs. Columbia Railway, Gas and Electric Company, et al.; and it appearing from the verified petition filed on said application that further proceedings in said suit should be stayed;

Now, on motion of Elliott and McLain, attorneys for applicant,

It is ordered that John M. Daniel, Attorney General of South Carolina, the City of Columbia, W. B. Burney, Sam C. Blease, John H. Nance, Earle R. Ellerbe, John C. Coney, Thomas H. Tatum, R. M. McAdams and T. J. Cunningham constituting the Railroad Commission of South Carolina, North Columbia Land Company, The Town of Arden, The Town of Eau Claire, The Board of Trustees of Chicora College, The Columbia College, The School Board of the City of Columbia, petitioners in said suit and their attorneys, agents and servants, be and they are, and each of them is hereby stayed from any further proceedings therein, and in particular from proceeding with the refer-

ence in said suit set for January 25th, 1928, and from taking any other proceedings therein, except to adjourn said [fols. 132 & 133] reference subject to the further order of said referee, such stay to continue in full force and effect until the further order of this Court and until the hearing and determination upon the Rule to Show Cause hereinafter made and set forth.

Let service of this order on the above named petitioners be forthwith made by delivering to each of them personally a copy of same together with a copy of the petition upon which this order is granted.

It is further ordered that said petitioners do show cause before me in the U. S. Court Room at Columbia S. C. on Saturday Jan'y 28 1928 at half past nine o'clock in the forenoon, why said stay should not be continued pending the bankruptcy proceedings and the hearing and determination of the Bankrupt's petition for discharge.

Ernest F. Cochran, U. S. District Judge.

Jany. 24, 1928.

[fol. 134] In United States District Court, Eastern District of South Carolina

In Bankruptcy

In the Matter of Columbia Railway, Gas and Electric Company, Bankrupt

Order Staying Proceedings in State Court—Filed Feb. 2, 1928

This was a hearing on the return to the rule to show cause contained in my order of January 24, 1928, staying proceedings in the State Supreme Court brought by the State of South Carolina, ex relatione John M. Daniel, Attorney General, in which there were various intervenors joining as petitioners against the bankrupt and others. Attorney General Daniel, Assistant Attorney General Page, Irvine F. Belser, Esq., W. S. Nelson, Esq., ans C. T. Graydon, Esq., appeared in person and presented the return to the rule as attorneys for the various parties, petitioner and intervenors in the State Court proceeding. George M. Le

Pine, Esq., and W. C. McLain, Esq., appeared for the bankrupt.

It was brought to my attention that my former order was subject to some uncertainty as to whether it stayed the proceedings in the State Court as against Broad River Power Company and F. D. Campbell, respondents therein, as well as the bankrupt. I stated that I had not considered the question of staying the proceedings in the State Court as [fol. 135] against respondents therein other than the bankrupt. The attorneys for the bankrupt urged that I should include within the stay the other respondents in the proceedings in the State Court. J. B. S. Lyles, Esq., appeared on behalf of the Broad River Power Company and filed its petition as a creditor of the bankrupt, joining in the prayer for the stay and asking that Broad River Power Company and F. D. Campbell, the other respondents in the State Court, be included within the stay. This phase of the matter, as well as all other phases, was fully argued before me and has been given such consideration on my part as the available time would permit.

I stated at the hearing that it was my preference to take a matter of this complexity and importance under consideration rather than decide it upon the conclusion of the oral arguments. But counsel for petitioners in the State Court impressed upon me the urgency and importance of immediate decision, and, as my engagements are such that I can give no further study to the matter for several weeks, I have been reluctantly impelled to give my decision at once.

The return also contested the right of the Columbia Railway, Gas and Electric Company to be adjudicated a bankrupt, but this question must be raised by direct attack on the adjudication and this order is not intended to pass on such question, but is made without prejudice to the right of [fol. 136] any party by a proper proceeding to raise the issue whether the Columbia Railway, Gas and Electric Company can be adjudicated a bankrupt.

It is therefore

Ordered that the former order of this court, dated January 24, 1928, be, and the same is, hereby continued in full force and effect as a stay of all further proceedings in the State Court in the suit or proceeding mentioned in said order against Columbia Railway, Gas and Electric Com-

pany, Broad River Power Company and F. D. Campbell, except that petitioners in said suit or proceeding may apply to the Supreme Court of South Carolina for such construction or amendment of the pleadings therein, or may institute such new actions or proceedings, as will permit petitioners, or any of them, to proceed against the respondents, or either of them, other than Columbia Railway, Gas and Electric Company, for any relief which shall not in any way or manner affect the property or street railway system of the Columbia Railway, Gas and Electric Company, bankrupt.

Ernest F. Cochran, U. S. District Judge.

Columbia, S. C., February 2, 1928.

A true copy. Attest: S. W. S. Nelson, Clerk U. S. District Court, East. District, So. Ca. (Seal.)

[fol. 137] [File endorsement omitted.]

[fol. 138] IN SUPREME COURT OF SOUTH CAROLINA

In re ex Parte STATE OF SOUTH CAROLINA ex Relatione JOHN M. DANIEL, Attorney General, Petitioner,

against

BROAD RIVER POWER COMPANY, COLUMBIA RAILWAY, GAS & Electric Company, and F. D. Campbell, Respondents; ex Parte Town of Arden, The City of Columbia, et al., Intervening Petitioners

NOTICE OF MOTION TO AMEND PETITIONS

To Messrs. Elliott & McLain and J. B. S. Lyles, Esq., attorneys for respondents:

You will please take notice that the undersigned attorneys on behalf of the petitioners herein will move before the Supreme Court of South Carolina on Monday, February 13, 1928, at the opening of Court at ten o'clock A. M., or as soon thereafter as counsel can be heard, for an order allowing the prayer of the said petitions to be amended in accordance with the prayer contained in the proposed attached order and construing the said proceeding as being

only for relief against Broad River Power Company but not affecting Columbia Railway, Gas & Electric Company or its property, and directing and permitting the continuance of the said proceedings against said respondents, Broad River Power Company and F. D. Campbell; and will ask the Court to make and pass the attached order or an order of similar purport.

Jno. M. Daniel, Atty. General. Cordie Page, Asst. Atty. General. Melton & Belser, H. N. Edmonds, Corliss S. Monteith, C. T. Graydon, Nelson & Mullins, Attorneys for Petitioners.

[fol. 139] In Supreme Court of South Carolina

[Title omitted]

Order Allowing Amendment of Petitions

It being brought to the attention of this Court that since the passage of the order of reference herein, dated — January, 1928, referring this cause to L. D. Lide, Esquire, as Special Referee, the respondent Columbia Railway, Gas and Electric Company has filed its voluntary petition in bankruptcy, and on its motion, a stay has been granted by Hon. Ernest F. Cochran, United States District Judge, against further proceedings in this action against said Columbia Railway, Gas and Electric Company and its property, copy of which order has been filed with this Court; now, on motion of counsel for the petitioners herein,

It is hereby

Ordered and adjudged that petitioners be permitted to amend the prayer of their several petitions herein so that the same shall read as follows:

Wherefore your petitioners pray that this Court do adjudge that the Broad River Power Company is obligated to and should be required to maintain street car service in the [fols. 140 & 141] City of Columbia and its environs in accordance with the charters, obligations and contracts, assumed and acquired by said Company, as a condition and restrictions incident to its franchises, rights, and properties, and further that the Court do issue its writ and order requiring and compelling the said Broad River Power Com-

pany and F. D. Campbell to furnish and maintain adequate and proper electric street railway service in the said City of Columbia and its environs, in accordance with the requirements of the said charters, contracts and provisions of law applicable thereto, and to provide and maintain the necessary and proper facilities therefor; for the costs of this action; and for such other and further relief as may be proper.

And further that this action be construed to be one for relief against the defendants, Broad River Power Company and F. D. Campbell, (but not affecting said Columbia Railway, Gas and Electric Company or its property), under the allegations of the petitions and in accordance with the prayer thereof as hereinabove amended; and that petitioners be permitted to proceed in this Court under the pleadings heretofore filed, as so amended, and the proceedings heretofore had herein, as against the said respondents, Broad River Power Company and F. D. Campbell.

And it is further ordered that the Referee proceed herein under the order of the Court previously granted to take the testimony and report thereon with all convenient speed.

R. C. Watts, Chief Justice.

Columbia, S. C., 17 February, 1928.

[fol. 142] In Supreme Court of South Carolina

[Title omitted.]

Return to Motion to Amend Petitions

To Hon. John M. Daniel, Attorney General; Hon. Cordie Page, Assistant Attorney General; Messrs. Melton & Belser, H. N. Edmunds, Colin S. Monteith, C. T. Graydon and Nelson & Mullins, attorneys for petitioners:

In response to your notice of motion, returnable before the Supreme Court of South Carolina on February 13, 1928, respondents Broad River Power Company and F. D. Campbell oppose the motion upon the following grounds:

1. That the demurrers interposed by these respondents should be decided before the court considers the motion to amend, construe or proceed.

2. That the petition and order to show cause do not authorize the relief sought by the prayer as sought to be amended.

3. That the proceeding cannot be construed as being for relief versus Broad River Power Company but not affecting the Columbia Railway, Gas & Electric Company or its property.

4. That proposed order (served with the notice) nullifies the former order of the court (dated January 11, 1928) in [fol. 143] so far as such former order refers all issues of law.

5. That to grant the relief which the proposed amended prayer demands would deprive these respondents of their property without due process of law and would deny them the equal protection of the laws in contravention of Article I, Section 5 of the Constitution of South Carolina and the Fourteenth Amendment of the United States Constitution.

6. In event that any amendment be allowed to the prayer of said petitions or any construction of said proceeding be made, respondents respectfully insist that they are entitled to the usual time within which to plead to such pleadings or proceeding so amended or construed.

Elliott & McLain, J. B. S. Lyles, Attorneys for Respondents Broad River Power Company and F. D. Campbell.

[fol. 144] IN UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF SOUTH CAROLINA

In Bankruptcy

In the Matter of COLUMBIA RAILWAY, GAS AND ELECTRIC COMPANY, Bankrupt.

ORDER VACATING ORDER OF JANUARY 24, 1928—Filed Mar. 13, 1928

For the reasons set forth in the opinion filed in the above entitled cause this day,

It is

Ordered, adjudged and decreed that the order of this court heretofore made, dated January 24, 1928, adjudicat-

ing the Columbia Railway, Gas & Electric Company a bankrupt upon its voluntary petition herein, be and the same is hereby vacated, revoked and set aside.

Ernest F. Cochran, M. S. District Judge.

Charleston, S. C., March 13, 1928.

A true copy: Attest: Richard W. Hutson, Clerk of U. S. District Court, East. Dist. So. Ca. (Seal United States District Court, Eastern District, So. Ca.)

[fol. 145] In United States District Court, Eastern District of South Carolina

In Bankruptcy

In the Matter of Columbia Railway, Gas and Electric Company, Bankrupt

Opinion—Filed Mar. 13, 1928.

The Columbia Railway, Gas & Electric Company filed its voluntary petition and was adjudicated a bankrupt. The State of South Carolina and the city of Columbia (the latter being a creditor of the bankrupt) filed a petition praying that the adjudication be vacated on the ground that the bankrupt is "a railroad corporation" and therefore by the express terms of the Bankrupt Act as amended in 1910 excluded from the operation of the Act. A rule was issued for the bankrupt to show cause why the adjudication should not be vacated and the bankrupt has made return thereto. There is practically no dispute on the facts which are set forth in the petition of the State and the city and the return of the bankrupt, and it is conceded by both sides that the question to be decided is whether or not the bankrupt is "a railroad corporation" within the meaning of the amending Act of 1910.

The bankrupt, formerly named the Columbia Electric Street Railway, Light & Power Company (the name having been changed by the amendment of May 18, 1911), was [fol. 146] created by the Act of the General Assembly of South Carolina, September 16, 1891 (20 Stat. 1453), which

authorized the consolidation into one grant of the powers and franchises to furnish the public utilities of gas, electric light, and power and transportation service to the City of Columbia and community. The bankrupt under this Act acquired the powers and obligations of various corporations, and among them from the Columbia Electric Street and Suburban Railway & Electric Power Company the power to "construct or acquire single or double railway "tracks of such guage as they may elect, through any "street or streets of the City of Columbia, with consent "of City Council, and to extend the same five miles into "the country, in any direction or directions they may "wish, from the State Capitol" and also the power "to "operate their cars in the transportation of passengers "and freight over the tracks they may construct or ac- "quire in said city, with electric power, in suitable carri- "ages, and at such rates as may be fixed upon in the by-laws "of the same."

From the Columbia Street Railway Company, which the Act authorized it to purchase, it acquired similar powers including the right to extend its tracks "five miles beyond "the corporate limits of said city." It also acquired the line of railway which had been constructed into the town of Eau Claire, situated north of the city of Columbia, by the Columbia & Eau Claire Electric Company, under its charter powers "to build, purchase, and operate an electric "[fol. 147] and suburban railway from Columbia to a point "or points in Richland County within eleven miles of said "city."

By virtue of the consolidating Act, it also acquired from the Congaree Gas & Electric Company the power to carry on and conduct the business of using electricity, manufacturing light, heat or power by electricity or any other agent for lighting or heating streets, roads, etc., stores, residences, etc., steamboats, railroad cars, locomotives, or for other transportation or industrial purposes.

Under these powers, the bankrupt never did any freight transportation business; but it did a passenger business by means of electric trolley lines constructed by it and other companies whose rights it acquired, in the city of Columbia and to certain points outside the city. Lines were operated in the city of Columbia and to the incorporated towns of

Arden, Eau Claire, Shandon, and to various unincorporated communities near the city. During the World War, it also built and operated a line of passenger service to Camp Jackson about six miles from the city; but this line was dismantled about the year 1926. On March 11, 1927, the bankrupt discontinued service on all of its railway lines. Prior to this final cessation of all railway passenger service, it had discontinued the operation of certain of its lines, but at that time it was then operating along a number of streets in the city, and beyond the city of Columbia to the incorporated towns of Eau Claire and Arden, the former [fol. 148] town of Shandon (the latter town being now included in the city of Columbia), and other unincorporated communities near to but outside of the city. The total length of lines operated by it (not including the Camp Jackson line, and counting the double tracks as a single line), was twenty (20) miles and a fraction. The petition alleges and the return admits that the total population of Columbia and the towns and communities referred to is between 50,000 and 60,000. There was no physical connection of the bankrupt's tracks with the steam railroads running into Columbia, but its cars ran to the steam railroad station and carried passengers thereto as is usual in the case of street railways.

The bankrupt also did a public business of furnishing gas, electric light, power, etc., until June, 1925, when under authority of the Act of the General Assembly of South Carolina of March 19, 1925, (34 Stats. 842), it sold and transferred all its gas, electric light, power, and other property rights and franchises to the Broad River Power Company, excepting from said sale only its rights and properties and franchise connected with its railway department and service. From the time of this sale, the only business of the bankrupt was a railway passenger Service on the various lines last mentioned, until March 11, 1927, when all service was discontinued, as above stated.

On July 28, 1927, the South Carolina Railroad Commission, by an order directed the bankrupt to resume railway service and a bill for an injunction against the enforcement [fol. 149] of that order was brought in this court and later stayed, because it appeared that a proceeding had been brought before the Supreme Court of the State against the bankrupt and the Broad River Power Company, accom-

panied by a stay, to compel them to resume service and to comply with the order of the Railroad Commission. The latter case was pending in the Supreme Court when the bankrupt filed its petition for adjudication.

At the hearing it was conceded by both sides that inasmuch as the bankrupt had entirely discontinued its business of furnishing gas, electricity, etc., there would be no need to consider what effect, if any, such business might have upon the question involved here, and that the sole question to be decided is whether the bankrupt is a railroad corporation within the terms of the Bankrupt Act. The bankrupt contends that it is merely an ordinary street railway, and that such railways are not excepted from the terms of the Act; while the State and the city contend that the bankrupt is more in the nature of a suburban or interurban railway company, and that in any event street railways are included under the term "railroads," and therefore excluded from the operation of the Bankrupt Act.

Before discussing the particular point involved, it is advisable to consider the history of the Bankrupt Act in this respect.

By Sec. 37 of the Bankrupt Act of 1867 (14 Stats. 535) the provisions of the Act were made applicable to all "moneyed business or commercial corporations and joint "stock companies." There were no exceptions in this Act, and under it railroad and street railway corporations could [fol. 150] be adjudicated bankrupt. But the Bankrupt Act of 1898 provided (30 Stats. p. 547, Sec. 4) "that any per- "son owing debts except a corporation might become a "voluntary bankrupt, and that any natural person, * * * "any unincorporated company and any corporation en- "gaged principally in manufacturing, trading, printing, "publishing, or mercantile pursuits, might be adjudged an "involuntary bankrupt." It was also provided that pri- "vate bankers but not national banks or banks incorporated "under any State or territorial laws might be adjudged "involuntary bankrupts." By the Act of 1903 (32 Stats. p. 797, Sec. 3) the provisions as to involuntary bankruptcy were extended to include mining corporations.

In this state of the law, no corporation could become a voluntary bankrupt and when corporations desired to obtain the benefits of this Act, they resorted to the roundabout method of admitting insolvency and being adjudi-

cated on a petition of creditors in involuntary proceedings. There arose great difficulty as to the proper construction of the provisions of this Act concerning corporations permitted to become involuntary bankrupts, and there were a number of decisions which were not entirely harmonious and in some cases directly conflicting. (See Report of House Committee of May 16, 1910, accompanying H. R. 20575, p. 4; and Report of Senate Committee of February 22, 1910, upon the same bill, p. 4). Congress then passed the Act of June 25, 1910, c. 412, Sec. 3 and 4 (36 Stats. 839) amending the Act of 1898, and providing that any person except a municipal, railroad, insurance or banking corpora- [fol. 151] tion might become a voluntary bankrupt. The amending Act also substituted for the words "and any "corporation engaged principally in manufacturing, trad- "ing, printing, publishing, mining, or mercantile, pursuits," the words, "any moneyed, business, or commercial corpora- "tion, except a municipal, railroad, insurance or banking "corporation." These amendments were made pursuant to the recommendations of the two Committees above referred to. The reports of the two Committees are in this connection identical and they both show that the object of the amendments was to change the law so as to allow corporations to become voluntary bankrupts with the exceptions mentioned and to remove the uncertainty relative to the meaning of the words in the Act of 1898 relating to corporations being the subject of involuntary bankruptcy proceedings. After adverting to these matters, the Committee (p. 5) used the following language: "The words sub- "stituted are taken from the bankruptcy law of 1867, and "their meaning has long since been settled by the courts. "The reason for exempting the quasi-public corporations "will be apparent. Banks are excepted from the operation "of the law at present. Other business entities having "similar responsibilities to the public are now also ex- "cepted."

If the language of a statute is ambiguous or uncertain, the reports of committees may be resorted to to assist in gathering the intenet of Congress.

Holy Trinity Church v. U. S., 143 U. S. 457, 464, 465.
Northern Pacific Co. v. Washington, 222 U. S. 370, 380.
McLean v. U. S., 226 U. S. 374, 380.

[fol. 152] St. Louis, etc., Ry. Co. v. Craft, 237 U. S. 648, 660, 661.
Woodward v. de Graffenried, 238 U. S. 284, 299.

The construction to be given to the term "railroad" in the excepting clause of the amending Act must of course be the same throughout the United States. The Statutes of South Carolina, therefore, are of little if any value, upon the question, though it would appear that these statutes draw a distinction between the ordinary railroads operated by steam, interurban railroads, and street railways. (See Code of S. C. of 1922, Vol. 3, Sec. 4359, 4366, 4763, 5003, 5041, 5059.)

There are a large number of decisions, State and Federal, construing the meaning of the word "railroad" under various statutes; but these decisions are of very little, if any, assistance. In the first place, the statutes are so different and their context and purposes are so different as to afford no solution of the present problem. In addition to that, the decisions are in hopeless disagreement. All the cases recognize that while there is a similarity between railroads and street railroads, there is also a difference. In a large number of cases, the courts, emphasizing the similarity, hold that in statutes the word "railroad" includes street railroads unless the contrary is required by the context. Others, emphasizing the dissimilarity, hold that "railroad" does not include "street railroads" unless required by the context. They all hold however that the meaning of the word is to be determined by construing the [fol. 153] statute as a whole. If the scope of the Act is such as to show that both classes of companies were within the legislative contemplation, then the word "railroad" will include street railroads. On the other hand, if the Act was aimed at railroads proper, then street railroads are excluded from the provisions of the statute.

Omaha Street Ry. Co. v. Interstate Commerce Comn., 230 U. S. 324, 335.

The word "railroad" in a strictly accurate sense is a generic term and certainly includes all kinds of railroads, whether street railways, horse-car lines, cable car lines,

electric trolley lines, suburban lines, interurban roads, or steam railroads engaged in general transportation. But the word "railroad" is not always used in this broad sense, and indeed, it may be conceded that ordinarily and popularly it is generally used when referring to the steam railroads which connect with one another and form a part of the transportation system of railroads throughout the country; and the question whether or not Congress in the Bankrupt Act intended that it should be understood in its broader or more limited sense is to be determined, as I view it, from a consideration of the scope and purposes of the Bankrupt Act and the mischiefs or inconveniences which Congress anticipated would result from placing railroads within the operation of the Act. The main purpose of the Bankrupt Act was to provide a method whereby the estates of insolvent debtors would be applied for the benefit of creditors as rapidly as practicable, and the unfortunate debtor released from further obligation. It is evident from the reports of the committees above referred [fol. 154] to that it was anticipated that grave inconvenience would result if certain corporations of a public and quasi-public nature were brought within the scope of that Act. It is obvious that if railroads were allowed to become bankrupts, many and serious difficulties would arise as to their right to be freed from their obligations as public servants and large communities that depended upon them would be put to great inconvenience, if not to absolute disaster. Every consideration which applies to railroads generally in this respect applies also to street railways. The consequences would be different in degree and intensity merely, not in quality or kind. A city and its people dependent upon the transportation service of its street railway system could be paralyzed, temporarily, at least in their business activities, if those companies could by voluntary petition or upon the petition of three creditors, be adjudicated a bankrupt. It is well recognized that under modern conditions, large public service corporations like railroad corporations and street railway systems cannot be put upon the block and sold as a general rule, but must be reorganized. If in cases of embarrassment, such corporations are left to the ordinary remedies by bills in equity and receivership, that court is fully competent to

undertake such reorganization; but the bankruptcy court looks to a prompt sale of the property and distribution of the assets. Under the Bankrupt Act (U. S. Code, Title 11, Sec. 11, Subd. (5)) the bankrupt court may authorize the business of bankrupts to be conducted for limited periods by receivers, marshals, or trustees, if necessary in the best interests of the estate. While the bankrupt [fol. 155] court exercises equitable powers and might authorize the trustee to continue the business of a railroad corporation for limited times, nevertheless that question should, in bankruptcy, as a general rule, be decided with a view to the interests of the estate, and it occurs to me that Congress did not contemplate by the Bankruptcy Act such continuation by trustees of the business of bankrupts as would be necessary in the case of railroad and street railway corporations. Grave questions might arise, too, as to the right of such corporations to cease business, as have arisen in the case of the present bankrupt, as to the right of the alleged bankrupt in view of its alleged connection with the Broad River Power Company to surrender its franchise and be released from its obligations. In a word, the machinery of the bankruptcy court is not appropriate to the administration of the affairs of railroad or street railway corporations involving, as they do, other interests than those of creditors and of the bankrupt, of an important public nature.

It is clear, I think, from the reports of the Committees above referred to that the dominant idea of Congress in excluding railroads from the operation of the Act was their quasi-public nature and duties. It is true that Congress did not see fit to include all public service corporations and utilities within the exception, and the learned counsel for the bankrupt argue that therefore street railways are not to be deemed excluded because of their quasi-public nature. But Congress may have thought for other [fol. 156] reasons that it was not wise to exclude other public service corporations than those enumerated. The fact remains, however, that they did exclude railroad corporations and that it must have been largely, if not entirely, because of their quasi-public nature and the inconvenience which would result, if the bankruptcy court were open to them, and such considerations certainly apply to street railways.

The whole argument of the bankrupt is founded on the idea that inasmuch as the term railroad is ordinarily used to mean steam railroads engaged in a general transportation service, that term in the statute should be given the meaning as commonly used and understood, which would not embrace street railways. But the same argument would exclude certain municipal corporations as not within the ordinary meaning of those words and thus permit them to be the subject of adjudication in bankruptcy. Both "municipal corporations" and "railroad corporations are excluded from the operation of the Act. Municipal corporations as ordinarily and popularly understood refer to cities and towns. But the term is frequently used in a much broader sense, including not only cities and towns, but also counties, parishes, townships, and in some cases school districts, and generally any district incorporated for local political and governmental purposes. See Title Municipal Corporations, 5 Words & Phrases, 4620 to 4627, where numerous cases on the subject are cited. It might just as plausibly be argued that Congress used the term municipal corporations in its more limited sense as referring to cities and towns, and yet venture to assert that [fol. 157] no one would seriously contend that only cities and towns are excluded from being adjudicated bankrupts, and the reason is that Congress has used the broad, general term, municipal corporations, which embraces all the different kinds of such corporations, and because they are all within the mischiefs which would result if they were not excluded from the operation of the Act. The reason for their exclusion is found in the public and political nature of their functions and obligations. So by parity of reasoning, Congress used the broad, general term railroad, and all kinds of railroads must be deemed included in that term, for the mischiefs attending the one case follow in all of them, and the basis for the exclusion of all of them is found in their quasi-public functions and obligations.

There is another consideration which is of some force in this connection. There are certainly street railways of an interurban type running through the streets of a city and from one city to another which would be included under

the term "railroads" under the Bankrupt Act. This much, I think, must be conceded, and if so, then great difficulty would be experienced in drawing distinctions between the various types of street railways. Some of them do business within a small town or city alone; others extend to various suburban communities beyond the city; still others extend shorter or longer distances between various towns and cities. Some carry only passengers; some carry passengers and express; while others carry passengers, express and freight. To draw distinctions between these [fol. 158] various classes of what may be termed street railways, and say whether any particular one is a railroad proper and excluded by the Act or a simple street railway only and not excluded by the Act would be wellnigh impossible. I do not apprehend that Congress intended that any such refined and subtle distinctions should be drawn. In view of the scope and purpose of the Bankrupt Act, the mischiefs and inconveniences that Congress anticipated would result from allowing this class of corporations to be the subject of adjudication, I am constrained to the view that the broader and more accurate meaning of the term "railroad" should be adopted here, and that street railways are included within that term. While the State decisions upon this subject are, as above stated, of little if any assistance, nevertheless there is one case where the language of the statute and the circumstances are so closely analogous to the present case that I think it should be adverted to.

In the case of Central National Bank of Worcester v. Worcester Horse R. R. Co., where the question was whether a horse street railroad corporation was within the exception of the general insolvent law, which provided that "any corporation created by authority of this State, "except railroad and banking corporations" might institute such proceedings, the Supreme Court of Massachusetts held that the horse railroad in question must fall within the exception of "railroad corporations" and not within the general class of corporations out of which railroad corporations are excepted. While there are some differences in the other [fol. 159] statutes involved in that case from the statutes in question here, nevertheless, the analogy is very strong, and the reasoning of the court in that case is very persua-

sive of the correctness of the conclusion I have reached in this case.

Central Natl. Bk. of Worcester v. Worcester Horse R. R. Co., 13 Allen 105.

The bankrupt relies upon the case of In re Grafton Gas & Electric Light Co. (D. C. N. D. W. Va.) 253 Fed. 668. In that case, it was held that a corporation operating something over six miles of electric street railway in the city of Grafton was not a railroad within the meaning of the amending Act of Congress of 1910, but was a purely local institution, and was therefore subject to be adjudicated a bankrupt. In the case at bar, my view is that the Columbia Railway, Gas & Electric Company partakes more of the nature of a suburban or an interurban street railway than of a simple street railway in one town or city; and the case referred to might be distinguished from the present case on that ground; but while I hesitate to disagree with the learned judge who wrote that opinion, nevertheless I prefer to rest my decision upon the broader ground that I think the embarrassment which would result from railroads generally being brought within the purview of the Bankrupt Act applies to street railways companies practically of all kinds. There may be a few cases of street railways where the facts and circumstances are such that they could not be said to be included within the term railroad as used here, but in my opinion most, if not all of them, are within the [fol. 160] mischiefs sought to be avoided, and certainly the street railway in the present case is of that type. It is to be noted, too, that in that case the learned judge who wrote the opinion does not appear to have considered the question free from doubt, and appears to have based his decision largely upon the case of Omaha Street Railway v. Interstate Commerce Commission, supra, which I do not think is controlling.

This brings us to the consideration of the last mentioned case, upon which the bankrupt also relies. In that case, the Supreme Court held that a street railway was not within the term "railroad" as used in the Commerce Act of 1887; but the decision was based upon the context of that particular Act. It was said that every provision of the statute there considered was applicable to railroads and only a few

of its requirements applicable to street railroads,—that street railroads were not within the mischiefs sought to be corrected;—that the remedial provisions of the statute were not applicable to them;—that the commands upon every railroad subject to the Act were such that they could not be obeyed by street railroads because of the nature of their business and character and location of their tracks. For these reasons it was held that the case was within that large line of authorities which held that under such a statute the word "railroad" cannot be construed to include street railroad. Omaha St. Ry. Co. v. Interstate Commerce Comm., supra. I do not think this decision of the Supreme Court is in point here, nor do I think that the conclusion I have reached is inconsistent with anything said in that case. [fol. 161] The latest case by the Supreme Court upon the subject to which my attention has been called is the case of U. S. v. Village of Hubbard, 266 U. S. 474. In that case, it was held that interurban electric railroads engaged in interstate commerce are subject generally to regulation by the Interstate Commerce Commission. The decision was based largely on the fact that neither in the Act to regulate commerce of February 4, 1887, (24 Stats. 379) nor in any amendment thereto prior to that of June 18, 1910 (36 Stats. 539, 552) is there any specific reference to electric railroads and that the basis for the jurisdiction of the Commission over them is the generality of the language of the original Act which declared in Sec. 1 that its provisions "shall apply to any common carrier or carriers engaged in the transportation of passengers or property * * * by railroad," and as the Act made no distinction between railroads operated by steam and those operated by electricity, the Commission made none. U. S. v. Village of Hubbard, supra, 478. The conclusion I have reached in the present case is not inconsistent, but in harmony, with the decision in that case.

Counsel for the bankrupt further argue, however, that in any event the right of the bankrupt to be adjudicated must be decided by the nature of the business it was conducting at the time it filed its petition for adjudication; to wit, January 24, 1928; and that inasmuch as it had not conducted any business of any railway service or of any other nature whatsoever after March 11, 1927, it could not be said to be

a railroad corporation at the time its petition was filed. I cannot accede to this view. If this were correct, then every [fol. 162] corporation falling within the exception of the statute and thereby excluded from the benefit of the Bankrupt Act could by simply ceasing business for awhile come in and be adjudicated a bankrupt in the very case in which the Act of Congress said it should have no such right. Such a destructive construction of the Act of Congress is inadmissible in any aspect of the case.

For these reasons, I think it must be held that the adjudication was improvidently granted and must be vacated and set aside, and an order to that effect will be entered accordingly.

Ernest F. Cochran, U. S. District Judge.

Charleston, S. C., March 13, 1928.

A. true copy. Attest: Richard W. Hutson, Clerk of U. S. District Court, East. Dist. So. Co. (Seal United States District Court, Eastern District So. Ca.)

[fol. 163] [File endorsement omitted.]

[fol. 164] In Supreme Court of South Carolina

[Title omitted]

Notice of Motion for Order Allowing Petitioners to Proceed

To Messrs. Elliott & McLain and J. B. S. Lyles, attorneys for the respondents Broad River Power Company, Columbia Railway, Gas & Electric Company, and F. D. Campbell:

You will please take notice that the undersigned attorneys on behalf of the petitioners herein will move before the Supreme Court of South Carolina at 9:30 o'clock A. M., on Saturday, March 17, 1928, or as soon thereafter as counsel can be heard, for an order permitting the petitioners to proceed herein as they may be advised against all the respondents herein including the Columbia Railway, Gas & Electric Company just as though no stay order had been

granted by the Federal Court, and further directing the referee to proceed under the orders of reference heretofore granted herein and under all the pleadings filed in this Court, and for such other and further order in the premises as may be proper.

The said motion will be based upon the proceedings herein and upon the order of the Honorable Ernest F. Cochran, United States District Judge for the Eastern District of South Carolina, dated and filed on the 13th day of March 1928 in the proceeding entitled In re Columbia Railway, Gas & Electric Company, Bankrupt, heretofore pending in the United States District Court for the Eastern District of South Carolina, and vacating and setting aside the order of adjudication in bankruptcy of the said alleged bankrupt, a copy of which order is to be filed with this Court.

Jno. M. Daniel, Attorney General. Cordie Page, Asst. Attorney General. Melton & Belser, H. N. Edmunds, Colin S. Monteith, C. G. Graydon, W. S. Nelson, Attorneys for Petitioners.

Columbia, S. C., 13 March, 1928.

[fol. 165] Service acknowledged 13 March, 1928, 5:30 p. m.

[fol. 166] In Supreme Court of South Carolina

[Title omitted]

Return of Broad River Power Company and F. D. Campbell to Motion Returnable March 17, 1928, Pursuant to Notice Dated March 13, 1928

To the Honorable the Supreme Court of South Carolina:

Now come the respondents, Broad River Power Company and F. D. Campbell, and by way of return to the motion above recited respectfully show:

1. Upon information and belief, that the order issued by Honorable Ernest F. Cochran, United States District Judge, dated March 13, 1928, does not in any wise vacate or affect the "Order Staying Proceedings in State Court," issued

by him in the matter of Columbia Railway, Gas and Electric Company, bankrupt, dated February 2, 1928, and referred to in the order of this Court of February 17, 1928. That said order (issued by Judge Cochran and dated March 13, 1928) is expressly limited to vacating the specific order of the District Court dated January 24, 1928, which adjudicated the Columbia Railway, Gas and Electric Company a bankrupt upon its voluntary petition.

That on January 24, 1928, in addition to its petition for adjudication as a voluntary bankrupt, the Columbia Railway, Gas and Electric Company filed a separate petition in the United States District Court praying for a stay of the [fol. 167] proceedings in this Court. That on the filing of this separate petition a separate temporary stay order was granted by Judge Cochran (dated January 24, 1928), together with an order to show cause returnable on January 28, 1928. That return was made and heard on that date, and taken under consideration until February 2, 1928, when the final stay order was made. That the order of March 13, 1928, (a copy being attached as Exhibit "A"), does not dismiss the petition in bankruptcy and has no reference to the separate petition for a stay of proceedings or the separate orders issued thereon. That a certified copy of the complete record in the United States District Court was filed with the Referee.

That petitioners have appealed to the United States Circuit Court of Appeals from the stay order of February 2, 1928, and the Columbia Railway, Gas and Electric Company has appealed from the order of March 13, 1928, vacating the order of January 24, 1928, adjudicating it a bankrupt.

2. That the order of this Honorable Court, dated February 17, 1928, was entered on the motion of petitioners and over the objection of these respondents as expressed in their return to such motion duly filed in this Court. That such order was practically if not entirely identical with the order submitted by petitioners as a proposed order and duly served on these respondents as a part of the notice of motion. That such order constituted a voluntary election on the part of the petitioners, granted by this Court, to dismiss the Columbia Railway, Gas and Electric Company from this action and to continue the same as against these

respondents, upon the pleadings as amended and construed by said order.

3. Upon information and belief, that following such order of this Honorable Court, the Special Referee, under date of February 18, 1928, issued his order calling a reference on Wednesday, February 29, 1928, which order was received [fol. 168] through the mail by the attorneys for these respondents on Monday morning, February 20, 1928. That on the same date these respondents duly filed with this Court and mailed to said Referee their protest against such reference proceeding without respondents being allowed time to plead to the petitions as amended and construed by the aforesaid order of this Court and to prepare their defense thereto, as will more fully appear by reference to said protest. That the Referee overruled said protest and ordered the reference to proceed, and such reference did proceed on February 29, March 2, 3, 5, 6 and 7, when the taking of all testimony offered was concluded and the reference adjourned to permit the attorneys to prepare for the argument before the Referee set for March 27, 1928.

4. That the respondents were put to great inconvenience and expense in employing attorneys and appearing at such reference and in arranging for the attendance of a number of witnesses from distant points at such reference, two of such witnesses coming from the city of New York, two coming from the city of Reading, Penna., one from the city of Easton, Penna., and one from the city of Charlotte, N. C., such witnesses being familiar with the general subject matter covered by the facts alleged in the pleadings and it being necessary for respondents to have them present to testify in certain contingencies. That upon conclusion of the testimony offered by petitioners, the respondents' counsel were of the opinion that petitioners had offered no testimony tending to support the cause of action alleged under the pleadings as amended and construed by the order of this Court, and decided to rest without using any of these witnesses. But in the meantime these respondents had offered in open reference to submit these witnesses to examination by petitioners' attorneys, if they so desired, the attendance of some of them having been previously re-

quested by petitioners' attorney. That it would entail great inconvenience and expense on these respondents to be [fol. 169] forced into another trial on the merits in this cause, as respondents would necessarily have to again arrange for the attendance of these and probably other witnesses.

5. That the motion now before the Court, to which this return is made, is so vague and indefinite that it does not apprise these respondents concerning the order sought sufficiently for them to make return thereto and intelligently oppose the same.

6. That these respondents respectfully submit that any order of this Honorable Court issued on this motion, except an order denying the same, under the circumstances stated above would deprive these respondents of their property without due process of law and deny to them the equal protection of the laws in violation of section 5 of article 1 of the Constitution of South Carolina and section 1 of the Fourteenth Amendment of the Constitution of the United States, the protection of both of which is especially set up and claimed.

7. Not waiving but insisting upon their position and objections hereinbefore set forth, these respondents point out that on the trial before the Referee under the order of this Court dated February 17, 1928, these respondents conducted their case, cross-examined petitioners' witnesses, made their objections to evidence offered, and determined their course of procedure, upon the theory of the case as made by the pleadings as amended and construed by the order of this Court dated February 17, 1928. And these respondents respectfully insist that should this motion be in any wise granted, the order granting same should provide that the Special Referee proceed de novo with the trial of all issues of law and fact and that failure so to provide would deprive these respondents of their property without due process of law and deny to these respondents the equal protection of the laws in violation of section 5 of article 1 of the Constitution of South Carolina and section 1 of the [fol. 170] Fourteenth Amendment to the Constitution of

the United States, the protection of both of which is especially set up and claimed.

Elliott & McLain, J. B. S. Lyles, Attorneys for Respondents Broad River Power Company and F. D. Campbell.

Duly sworn to by F. D. Campbell. Jurat omitted in printing.

[fol. 171] EXHIBIT "A"

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF SOUTH CAROLINA

In Bankruptcy

In the Matter of COLUMBIA RAILWAY, GAS AND ELECTRIC COMPANY, Bankrupt

ORDER VACATING ORDER OF JANUARY 24, 1928

For the reasons set forth in the opinion filed in the above entitled cause this day,

It is

Ordered, adjudged and decreed that the order of this court heretofore made, dated January 24, 1928, adjudicating the Columbia Railway, Gas & Electric Company a bankrupt upon its voluntary petition herein, be and the same is hereby vacated, revoked and set aside.

Ernest F. Cochran, U. S. District Judge.

Charleston, S. C., March 13, 1928.

[fol. 172] IN SUPREME COURT OF SOUTH CAROLINA

[Title omitted]

RETURN OF COLUMBIA RAILWAY, GAS AND ELECTRIC COMPANY TO MOTION RETURNABLE MARCH 17, 1928. PURSUANT TO NOTICE DATED MARCH 13, 1928

To the Honorable the Supreme Court of South Carolina:

Now comes the Columbia Railway, Gas and Electric Company and appearing specially and only for the purpose of

opposing the motion (returnable before this Honorable Court on March 17, 1928, pursuant to the notice dated March 13, 1928) and any order or relief asked against it on such motion, and respectfully insisting that this Honorable Court has dismissed it from this action and has no jurisdiction over its person, by way of return to such motion would respectfully show:

1. Upon information and belief, that while the Honorable Ernest F. Cochran, United States District Judge, has entered an order, dated March 13, 1928, in the bankruptcy proceedings, a copy being attached as Exhibit "A," vacating the order of January 24, 1928, adjudicating this Company a bankrupt, such order in no wise undertakes to dismiss the petition in bankruptcy, or refers to or undertakes to vacate the stay order, dated February 2, 1928, issued on a separate petition, a certified copy of which order has [fol. 173] been filed in this Court (and which is referred to in the opening paragraph of the order of this Court dated February 17, 1928), and the relief asked in this motion would be in violation of said stay order. That petitioners have appealed to the United States Circuit Court of Appeals for the Fourth Circuit from the stay order dated February 2, 1928, and the Columbia Railway, Gas and Electric Company has appealed to said Court from the order of March 13, 1928, vacating the order adjudicating said Company a bankrupt.

2. That the order of this Honorable Court, dated February 17, 1928, eliminated and dismissed this Company from this action by ordering "that this action be construed to be one for relief against the defendants, Broad River Power Company and F. D. Campbell, (but not affecting said Columbia Railway, Gas and Electric Company or its property), under the allegations of the petitions and in accordance with the prayer thereof as hereinabove amended; and that petitioners be permitted to proceed in this Court under the pleadings heretofore filed, as so amended, and the proceedings heretofore had herein, as against the respondents, Broad River Power Company and F. D. Campbell."

3. That accordingly on the 25th of February, 1928, this Company served upon petitioners' attorneys notice of a motion for an order dismissing the petitions herein as to

it. That such motion was duly made before the Referee, who ruled, as will appear from Exhibit "B" (a copy of the relevant portions of the transcript of hearings of February 29 and March 2) that he would submit his recommendation concerning the disposition of the motion to the Supreme Court. That thereupon this Company, by its attorneys thereunto duly authorized, stated and entered upon the record before said Referee that this Company withdrew from the reference, and would not be further represented therein, either by counsel or otherwise, and this Company [fol. 174] accordingly did withdraw from the reference and took no further part therein. Upon information and belief, that the reference proceeded without the presence of this Company, and all testimony offered therein by all parties was taken and the reference adjourned for argument before the Referee on Tuesday, March 27, 1928.

4. That this Company respectfully submits that any order of this Honorable Court authorizing or permitting further proceedings in this cause as against it, or affecting it or its property, as a result of this motion, under the circumstances stated above, and without the service of a summons and complaint upon it, as prescribed by the Code of Procedure, or a petition with an order to show cause, allowing it ample time to make return, pursuant to the established practice in this state, both in actions and proceedings in mandamus, would deprive it of its property without due process of law and deny to it the equal protection of the laws in violation of section 5 of article 1 of the of the Constitution of South Carolina and section 1 of the Fourteenth Amendment of the Constitution of the United States, the protection of both of which is especially set up and claimed.

5. That the order of this Honorable Court, dated February 17, 1928, was entered on the motion of petitioners and such motion constituted a voluntary election on the part of petitioners, granted by this Court, to dismiss this Company from this action and to continue the same against the other respondents. That if it be within the discretionary authority of this Court to grant the present motion, which is respectfully denied, it is submitted that the discretion should be exercised in refusing the motion because peti-

tioners, having voluntarily elected to take one course, and having had a trial therein on the merits, should not now be permitted to choose another—at least, without commencing a new action or proceeding against this Company, as provided by the well established practice in this state.

[fol. 175] 6. That the motion to which this return is made, being "for an order permitting the petitioners to proceed herein as they may be advised against all the respondents herein including the Columbia Railway, Gas & Electric Company just as though no stay order had been granted by the Federal Court, and further directing the referee to proceed under the orders of reference heretofore granted herein and under all the pleadings filed in this Court, and for such other and further order in the premises as may be proper," is so vague and indefinite that it does not apprise this Company concerning the order sought sufficiently for this Company to make return thereto and intelligently oppose the same; and that to grant any order affecting this Company or its property on such motion would deprive this Company of its property without due process of law and deny to it the equal protection of the laws in violation of section 5 of article 1 of the Constitution of South Carolina and the Fourteenth Amendment to the Constitution of the United States, the protection of both of which is especially set up and claimed.

7. Not waiving but insisting upon its position and objections hereinbefore set forth, this Company respectfully insists that, should this motion be in any wise granted, the order granting same should provide that this Company is in no wise bound by any proceedings heretofore had before the Special Referee under the order of this Court dated February 17, 1928, and that the Special Referee shall proceed de novo with the trial of all issues of law and fact in this proceeding. And this Company respectfully insists that failure to so provide would deprive it of its property without due process of law and deny to it the equal protection of the laws in violation of section 5 of article 1 of the Constitution of South Carolina and the Fourteenth Amendment of the Constitution of the United States, the protec-

[fol. 176] tion of both of which is especially set up and claimed.

J. B. S. Lyles, W. C. McLain, Attorneys for Columbia Railway, Gas and Electric Company.

Duly sworn to by F. W. Campbell. Jurat omitted in printing.

[fol. 177] In United States District Court, Eastern District of South Carolina

In Bankruptcy

In re Columbia Railway, Gas & Electric Company, Bankrupt

Order Dissolving Stay Orders—Filed April 2, 1928

For the reasons set forth in an opinion filed this date, it is

Ordered that the motion of the State of South Carolina and the City of Columbia to dissolve and revoke the orders of this Court heretofore made of January 24, 1928, and February 2, 1928, staying the mandamus proceedings in the State Court set forth and described in said orders, be and the same is hereby granted, and the said stay orders of January 24, 1928, and February 2, 1928, staying the proceedings herein described in the said State Supreme Court, be and the same are hereby dissolved and revoked.

Ernest F. Cochran, U. S. District Judge.

[fol. 178] In Supreme Court of South Carolina

[Title omitted]

Order to Proceed

It being brought to the attention of this Court that the attempted bankruptcy of the respondent Columbia Rail-

way, Gas & Electric Company has been vacated under the order of the United States District Court of March 13, 1928, and thereby the object and purpose of the amendment allowed, and of the construction of the pleadings contained, in this Court's order of February 17, 1928 has been removed; now on motion of the attorneys for the petitioners, and after hearing counsel for respondents,

It is hereby ordered and adjudged that the prayers of the original pleadings herein be, and the same are hereby restored, and all the parties hereto be and are hereby authorized and permitted to proceed herein, as they may be advised, under the original pleadings and proceedings, as affecting all the parties hereto including the Columbia Railway, Gas & Electric Company both severally and jointly with the Broad River Power Company, and to offer such other or additional evidence against any or all of said parties as may be proper under such proceedings, and the Special Referee is hereby authorized and directed to proceed herein under this and the other orders of this Court with all convenient speed.

R. C. Watts, Chief Justice.

April 12th, 1928.

[fol. 179] In Supreme Court of South Carolina, in the Original Jurisdiction

Ex Parte: State of South Carolina ex Relations John M. Daniel, Attorney-General, Petitioner,

against

Broad River Power Company, Columbia Railway, Gas & Electric Company, and F. D. Campbell, Respondents; ex Parte: Town of Arden, The City of Columbia, et al., Intervening Petitioners

Report of Special Referee

This is a proceeding in the original jurisdiction of this Court for a writ of mandamus to require the respondents to resume the operation of the electric street railway sys-

tem in the City of Columbia and its environs, the same having been discontinued on March 11, 1927. A brief history of the course of the litigation may be helpful.

History of Litigation

The original petition by the Attorney-General was filed on the 19th day of July, 1927, at which time an order to show cause was issued. Subsequently pursuant to orders granted at various times the following parties were allowed to come into the cause by intervention petitions, to wit: The Railroad Commission, North Columbia Land Company, City of Columbia, W. B. Burney, Columbia College, Chicora College, School Board of the City of Columbia, Town of Eau Claire and Town of Arden. Demurrers to the main petition and the intervention petitions were filed by the respondents, and returns and answers were also filed by them. The petitioners moved to strike out the returns and demurrers and also filed a reply.

[fol. 180] After the cause had been argued before this Court upon the pleadings and certain documentary evidence therein referred to an order was handed down by this Court dated January 11, 1928, referring to the undersigned as Special Referee all issues of law and fact, directing the Referee to take the testimony and report his conclusions with convenient speed. This order also stated that the intervenors were properly before the Court in that the orders allowing them to intervene were taken in open Court without objection on the part of the respondents. Pursuant to this order of reference, the Referee after conference with counsel representing the various parties, ordered a reference to be held on January 25, 1928. After this order was passed by the Referee, Columbia Railway, Gas & Electric Company, one of the respondents, was adjudicated a bankrupt upon its voluntary petition by order of Hon. Ernest F. Cochran, Judge of the United States District Court, dated January 24, 1928, and on the same day he issued a rule to show cause, temporarily staying the mandamus proceeding, and in compliance with this order, the Referee adjourned the reference subject to his own further order. On February 2, 1928, Judge Cochran handed down another order continuing the stay, with the

stipulation that the petitioners might apply to this Court for such construction or amendment of the pleadings or might institute such new actions or proceedings as would permit them or any of them to proceed against the respondents or either of them, other than the alleged bankrupt, for any relief which should not in any way or manner affect the property or street railway system of the alleged bankrupt. Thereupon counsel for the peti-oners made a motion before this Court for such amendment and construction of their pleadings, resulting in an order of this Court dated February 17, 1928, wherein the Referee was directed to proceed under a construction of the action as one for relief against the respondents Broad River Power Company of F. D. Campbell, "but not affecting the Columbia Railway, Gas & Electric Company or its property," the prayer of the petitions being appropriately amended.

[fol. 181] Pursuant to the latter order a reference was duly held continuing for several days. At this reference the petitioners introduced in evidence a mass of documents, records and papers, and also adduced a considerable volume of oral testimony. When the petitioners rested the respondents announced that they would offer no testimony, upon the grounds stated by them orally and in writing, substantially to the effect that without regard to their various defenses to the merits of the proceeding, upon which they still insisted, the Court could not grant a writ of mandamus against the respondents, other than the alleged bankrupt, without infringing upon both the order of the Federal Court and the order of this Court conforming thereto. The Referee then set March 27, 1928, for argument of counsel before him.

On March 13, 1928, Judge Cochran vacated the adjudication of Columbia Railway, Gas & Electric Company as a bankrupt, upon the ground that it came within the term "railroad corporation" as used in the Bankruptcy Act, especially in view of its public functions, and hence could not go into bankruptcy; and on April 2, 1928, he filed his opinion, pursuant to which the proper order was granted, holding that the stay order previously handed down by him should be dissolved. These orders of the Federal Court being brought to the attention of this Court, it was on April 12, 1928, ordered by this Court that the prayers

of the original pleadings be restored, and that all parties be authorized and permitted to proceed under the original pleadings and proceedings as affecting all the parties hereto, including Columbia Railway, Gas & Electric Company, both jointly and severally with Broad River Power Company and the Special Referee was thereby directed to proceed with all convenient speed. Incidentally it may be mentioned here that the Circuit Court of Appeals affirmed the orders of Judge Cochran vacating the adjudication in bankruptcy and revoking the stay order. The opinion of the Circuit Court of Appeals was filed on the 12th day of June, 1928.

[fol. 182] In the meantime, the Referee proceeded under the last order of this Court and duly ordered another reference, which was commenced on May 22, 1928. At this reference a special appearance was made in behalf of Columbia Railway, Gas & Electric Company objecting to the jurisdiction of this Court upon the ground that this action or proceeding was dismissed as to it by the order of the Supreme Court dated February 17, 1928, and that the Court had not acquired jurisdiction of its person bringing it back into this action or proceeding by due process of law under the State and Federal Constitutions; and moved to be dismissed from further attendance on the reference. The motion was overruled by the Referee upon the ground that the question had in effect already been decided by the Supreme Court; and the Referee was also of opinion that the previous order of this Court did not have the effect of dismissing the petitions as to the railway company but merely stayed the proceedings in so far as it was affected thereby, especially since the stay was brought about by the action of the railway company itself. The railway company thereupon through its counsel duly announced that its further appearance was under protest, fully reserving and not waiving its claim that the Court was without jurisdiction over its person and that it was denied its constitutional rights.

The reference then proceeded, and it was agreed by counsel that the testimony, both oral and documentary, previously introduced by the petitioners should be considered as if offered de novo, subject to all the objections previously entered thereto, and also subject to all the objec-

tions then entered thereto and which might thereafter be entered in the course of the reference. In this connection, it may be stated that by consent of counsel the testimony to which objection was made was not taken separately, but the objections were entered in the record with the understanding that further objections might be made in the course of the hearing before the Referee if desired.

[fol. 183] The petitioners moved the Referee for an order striking out the several returns and answers of the respondents on the ground that they are sham and irrelevant, dilatory and frivolous. The motion was overruled. Thereupon the respondents introduced in evidence numerous documents and papers, and the oral testimony of many witnesses was taken. Petitioners then put in their reply evidence, and the respondents were permitted a limited rebuttal. The hearing necessarily consumed several days and a considerable delay was required for the transcribing of the testimony. This having been completed counsel argued the case before the Referee fully on July 14, 1928, filing their final written arguments with him on July 30, 1928.

At the first reference the demurrers interposed by the respondents were argued before the Referee. The petitioners contended that the Referee had no jurisdiction to hear the demurrers, but he concluded that they should be heard and considered by him in view of the general terms of the order of reference. The Referee was of opinion that the pleadings were sufficient to withstand the demurrers, and they were, therefore, overruled, without prejudice to a nature and careful consideration of all the issues of law, as well as of fact, which might arise from the pleadings or the evidence.

From the history of the litigation as above set forth it is not surprising to learn that the cause has many intricacies and complexities, and both patience and industry are necessary to unravel the tangled skein; but when the evidence is analyzed it will be found that the facts are largely undisputed. The difficulties inherent in the case relate primarily to the application of the law to the undisputed evidence, and secondarily to the divergent inferences which may be drawn from the surrounding facts and circumstances. It will, therefore, be well to state as concisely

as possible the facts of the cause as found by the Referee after a painstaking examination of the evidence. And it will first be in order to detail the charters, ordinances, and agreements under which the street railway system in the City of Columbia and vicinity was installed, enlarged and operated.

[fol. 184] Statement of Facts

Columbia Street Railway Company was incorporated by an Act of the Legislature passed in 1882, Acts of 1882, page 877. This was, of course, before the advent of electric transportation. This charter act gave the company the power to construct railway tracks through the streets of the City of Columbia and to extend the same five miles beyond the corporate limits of the City, upon certain conditions therein mentioned, the company being given the exclusive right-of-way over its railway for the proper conduct of its business and the power to transport passengers and freight. The act provided that it should remain in force for the period of thirty years, provided the Company should begin to operate a railway in said city within five years.

On June 8, 1886, this company by its directors preferred a petition in writing to the City Council of Columbia praying for permission to lay its tracks on certain streets in the city for the purpose of inaugurating a street railway system, which, of course, was to be operated by horse power. Pursuant to this petition an ordinance was adopted by the City Council on June 29, 1886, wherein the company was authorized to lay its tracks upon the streets therein mentioned subject to various provisions as to how the tracks should be laid and repaired, as to the duties of the company with reference to drivers' speed, etc., as to obstruction of the streets, together with other incidental regulations. In addition thereto the ordinance provided that it should be the duty of the company on week days to run a car for passengers at least every hour from 7 A. M. to 9 P. M., except on that portion of the road which should be laid for pleasure trips only, the running of which should be directed by the company, until directed by Council to change the same. There was also a section of the ordinance stipulating that if the company should neglect

or refuse to run their passenger cars as therein provided for a period of three months, then the City might rent the road at public outcry for account of the company for twelve [fol. 185] months, and if the same were not rented and should be idle for twelve months, then the City might have the road taken up and sell the material to the highest bidder, and after deducting the expenses of taking the same up, selling the material, and repairing the streets any balance should be paid to the legal representatives of the company. It was also provided as a condition that all the tracks in question should be constructed within twelve months from June 29, 1886. The ordinance also reserved the right of amendment or alteration whenever circumstances might require it, and stated that the privilege granted to the Company should not be exclusive, but that the City might grant the same right to other companies through the same streets if deemed advisable. The Company proceeded under this ordinance to construct its tracks and to operate its railway system with the motive power thereby required. The advancement in mechanical science is very impressive when we observe that this ordinance passed within the memory of men not quite venerable provided that the company should use no other motive power than horses or mules without special permission, and that if two mules or horses were used they should be driven abreast.

Congaree Gas and Electric Company was incorporated by act of the Legislature passed in 1887, Acts of 1887, page 1103. This statutory charter gave the company power to manufacture and sell gas and to furnish such quantities of gas as might be required in or near the City of Columbia for light, heat and other purposes, to lay pipes, etc., for conducting gas through the streets, etc., of Columbia or its vicinity; and also, the power to carry on the business of using electricity for any purpose, of manufacturing light, heat and power by electricity within the State for the use of the inhabitants thereof, and to lay all necessary poles, pipes and conductors in the several cities, towns and villages thereof for such purposes, "subject to proper municipal ordinance and restriction." The charter contains numerous other details, but the substance is as above [fol. 186] stated. It will be observed that by the terms

of the charter the gas privileges relate only to Columbia or its vicinity, while the electric privileges relate to the entire state. The term of the charter was thirty years. The activities of this corporation, if any, do not appear in the evidence.

Columbia Electric Street and Suburban Railway and Electric Power Company was incorporated by act of Legislature passed in 1890, Acts of 1890, page 969. This charter provided that the Company should have power to construct or acquire railway tracks through any street or streets of the City of Columbia, "with consent of City Council", and to extend the same five miles into the country from the State Capital. The company was empowered to operate its cars in the transportation of passengers and freight with electric power, and was also authorized and empowered "to contract for and provide electric motor power for any other purpose or purposes." The term of this charter was thirty years: "provided, That said company begins to operate its railway in said city within five years."

In 1891 an act was passed by the Legislature, Acts of 1891, page 1453, authorizing the consolidation of the two companies last above mentioned, the consolidated company to be known as The Columbia Electric Street Railway, Light and Power Company. The act stated that these companies had agreed to consolidate and that the consolidated company was to acquire the property, franchises and privileges of the Columbia Street Railway Company (the old horse car company); and the consolidation and purchase were thereby authorized, "such consolidation to be effected by a deed of indenture." It was further provided that upon such consolidation the consolidating companies "shall be vested with all the rights, franchises, powers and privileges conferred upon the consolidating companies" by the two acts of incorporation above set forth, "and that said consolidated company be subject to all of the debts and liabilities of the two consolidating companies"; and the consolidated company was authorized to buy out The Columbia Street Railway Company "and upon such purchase said consolidated company be vested with all the rights, powers, franchises, and privileges" con- [fol. 187] ferred by the act creating that company, without

prejudice to its creditors. The Stock of the consolidated company was "to be divided in such proportions as may be agreed upon between the two consolidating companies for distribution among their respective stockholders."

On September 13, 1892, The Columbia Electric Street Railway, Light and Power Company, the consolidated company created as above set forth, preferred a petition in writing to the City Council of Columbia through its president wherein it was recited that this company has purchased the street railway line of the Columbia Street Railway Company, the original horse car corporation, together with all of its rights, franchises and privileges, and that petitioner desired to make such changes in the line as were necessary to enable it to operate its car by electricity. The petition stated that a draft of an ordinance to accomplish the desired object was submitted with the petition. The petition further stated that the company was anxious to proceed with its work as rapidly as possible. The draft of the ordinance as submitted does not seem to be in existence. The minutes of Council show that the ordinance was presented and read and on motion was considered its first reading. The minutes also show that on motion "both old and new ordinance" were referred to a joint committee for report at the next regular meeting of Council. On October 11, 1892, an ordinance was adopted by Council, but whether this ordinance conformed to the draft submitted by the company does not appear. The ordinance as adopted provided that the franchises, rights, privileges and powers previously granted the old company were conferred upon the new company, subject to all the duties, liabilities, restrictions and regulations "now or hereafter prescribed." The ordinance further provided that the new company should have the privilege of using electricity as a motive power for its cars and the further privilege of laying tracks on certain streets, and the right to erect poles, wires, etc., and the further privilege of running its cars at the rate of not more than ten miles an [fol. 188] hour on Main Street and not more than twenty miles an hour on side streets. The ordinance also reserved to City Council the right to regulate the manner of operating the electric railway and to alter and amend the ordinances relating thereto "by such further enactments,

as, in their judgment, the public welfare may demand." Pursuant to this ordinance the electric railway system was inaugurated and operated.

From time to time various ordinances were passed by City Council relating to the street railway system, some of them giving permission to lay tracks in other streets, and some of them giving mere police regulations. These ordinances were adopted at various times commencing with the year 1895. The last ordinance on the subject (anterior to the present controversy) was adopted August 23, 1921, and gave permission to constructed a track on certain streets not theretofore included in the system, the evidence being that this was a relocation of one of the routes.

In the meantime, to wit, May 18, 1911, the name of the street railway company was changed to Columbia Railway, Gas & Electric Company, and its capital stock increased, by amendment of the charter granted by the Secretary of State under the general laws; and on September 5, 1912, the charter was further amended under the general law so as to continue in force in perpetuity.

On April 9, 1907, the City Council of Columbia adopted an ordinance granting the right to The Suburban Transit Company, (a corporation chartered under the laws of this State), to construct a track through and along a part of Bull Street in the City of Columbia and the right to operate electric cars thereon "provided, the passenger fare shall never exceed five cents." This ordinance also stipulated that the previous ordinances of the City of Columbia relating to electric street railways should be applicable. The ordinance further provided that the company should file with the City Clerk its acceptance of the ordinance within ten days and that such acceptance should be an agreement by it to pay to the city any sum of money for which [fol. 189] the city might become liable by reason of any injury, and that the company would thereby indemnify the city against damages and maintain the street as required by the terms of the ordinance. Suburban Transit Company appears to have been a subsidiary of Suburban Homes Company, a development corporation which owned the suburban property called Colonial Heights, subsequently partially included in the Town of Eau Claire which is about two or three miles north of Columbia. Presumably this ordi-

nance was accepted, although no written acceptance was offered in evidence, as the line was constructed and operated, and the company conveyed it to Columbia Railway, Gas & Electric Company by deed dated June 13, 1912, and duly recorded, carrying all rights and privileges relating thereto.

The foregoing is a comparatively brief statement of the relations between the City of Columbia and street railway companies prior to the inception of the controversy out of which this action or proceeding arose. Columbia Railway, Gas & Electric Company, under that name as well as its former name, for convenience will hereafter sometimes be called Columbia Railway Company.

The corporate history of the street railway companies given above appears to be sufficiently involved, but the progress of the City of Columbia and its suburban developments and the consequent growth of the street railway system introduce many new complications which we shall endeavor to recount as concisely as practicable.

There were five suburban lines or extensions ultimately acquired and operated by Columbia Railway Company as a part of its system, three of these being through the territory north of the city and two of them being in what was then the Shandon suburb, but is now a part of the city. There was a line built in 1896 or 1897 from a point on Elmwood Avenue near the then northern limits of the city out to Hyatts Park about two miles in length. This line was constructed by or for Columbia and Eau Claire Electric Railway Company, chartered under the general law May 25, 1896, for the purpose of constructing and operating an electric street railway from Columbia to a point or points [fol. 190] in Richland County within eleven miles of the city, and also for the purpose of improving and selling real estate. A part of the present Town of Eau Claire seems to have come out of this development. Some rights-of-way were given for the construction of this line in consideration of the expected advantages and benefits and the public convenience. This line or extension was conveyed with the appurtenances, including Hyatts Park, to the Columbia Railway Company by deed dated February 8, 1900, and duly recorded.

An extension of the line last above mentioned was afterwards built from Hyatts Park to Columbia College, this

extension being about a mile in length, and was constructed by or for Hyatt Improvement Company, a corporation chartered February 26, 1905, by the late F. H. Hyatt and others for the purpose of buying and selling, improving and developing real estate, and was operated for a time by Hyatt Improvement Company. The line was conveyed by Hyatt Improvement Company to Columbia Railway Company by deed dated October 19, 1906, and duly recorded. This deed, which was also executed by F. H. Hyatt, individually, included a right-of-way recited as having been granted to him by the Town of Eau Claire by an ordinance ratified January 20, 1904, and certain other rights-of-way, etc. The ordinance referred to in this deed was not introduced in evidence and presumably was the mere grant of a right-of-way.

Another extension was afterwards built from Columbia College through the development known as College Place, now situate largely within the present Town of Arden. This extension which was about two miles in length was fostered by North Columbia Land Company, another development corporation, organized by F. H. Hyatt and others. This company made a contract in writing with the Columbia Railway Company on August 24, 1906, by the terms of which the railway company agreed to build the extension just mentioned and to put in in operation by November 1, 1906. It further agreed that after it acquired the line of Hyatt Improvement Company already referred to it would "thence-[fol. 191] forth" maintain that line as well as the extension, "and run and operate street railway cars over the said line and extension in connection with its lines of street railway in and near the said City of Columbia on convenient and reasonable schedule of not less than one car for every hour from 8 o'clock in the morning to 8 o'clock at night, and as much later and oftener as travel will warrant, of each day, at one fare of not more than 5¢ for each passenger from and to any of the usual stopping places on any of its lines including the line of the said Improvement Company and the proposed extension." The contract provided that the railway company should be reimbursed to the full amount of the actual cost of building the proposed extension upon the completion thereof. In May, 1908, the land company paid to the railway company $2,000.00, and the land company was thereupon released in writing from

all claims and charges under the original contract, pursuant to which the land company was chargeable with one-half of the actual cost of operation and was to receive one-fourth of the passenger fares, but did not release the land company from its liability under the contract for one-half of all sums paid for damages for personal injuries resulting from accidents occurring on the line in question. The release stipulated that in all other respects the original contract should continue in full force. On June 20, 1919, the land company released the railway company from the provision relating to the 5-cent fare, "subject to the terms of said agreement in all other respects."

The Shandon extensions were built under the following circumstances. Columbia Land and Investment Company, a real estate development company, which brought about the building up of the Shandon community, made a written contract with the Columbia Railway Company dated April 16, 1900, for the construction of this extension, which is about a mile in length, and under this agreement it was provided that the railway company should build the line in a first class manner and operate its cars thereon, running [fol. 192] at least one car per hour each way between the hours of 7:30 A. M. and 8 P. M. daily, and to continue such operation for two years. The agreement further provided that the investment company should pay the actual cost of the construction, retaining the title to the line; that at the end of the two year operation the Columbia Railway Company should have the right to purchase the line by paying the actual cost of construction without interest, and if the same were not purchased the railway company should have the right to take a lease for the period of ninety-nine years upon certain terms. The two year operation ended on August 15, 1902, and on September 6, 1902, the investment company executed a lease to Columbia Railway Company of the line in question, this lease being duly recorded. This lease was for the period of ninety-nine years commencing August 15, 1902, at a semi-annual rental of $222.28, the same being interest on the cost of construction at the rate of six per cent. per annum. The lease provided that the railway company should during the term thereof continuously operate the railway by running at least one car per hour each way between the hours of 7:30 A. M. and 8 P. M. daily. The

lease further provided that the railway company should have the option at any time during the continuance of the lease of purchasing the line for the sum of $7,409.57, the cost of construction, with interest from the last rental date.

By its deed dated June 30, 1909, and recorded in Richland County July 6, 1909, The Columbia Land and Investment Company conveyed to Columbia Railway Company the street railway line above referred to with the appurtenances thereto, for an expressed consideration of $7,409.57. This deed contains no covenants on the part of the railway company. The line is referred to in this deed as the Shandon Branch.

The above mentioned Shandon line was extended into what is called Shandon Annex pursuant to a written contract made on May 30, 1910, with Columbia Railway Company by Shandon Annex Company, another development [fol. 193] company, for the construction by the railway company of this Shandon Annex extension which was located in part through the property of Dr. W. B. Burney. The Annex Company was to pay in cash for all material used in constructing the line. The railway company agreed to operate the line and to maintain not less than one car an hour. The railway company also agreed to charge one 5-cent fare and to furnish transfers to its other lines. The contract further stipulated that when the line was completed the Annex Company should pay over to the railway company $2,500.00 in cash and execute an absolute and unqualified conveyance of the railway and appurtenances, including a right-of-way in perpetuity not less than thirty feet wide.

On or about July 12, 1910, Shandon Annex Company petitioned the Town Council of the Town of Shandon for permission to construct the line in question and Council thereupon adopted an ordinance granting this privilege and providing the right to operate electric cars thereon so long as the Columbia Railway Company should operate not less than four cars an hour on its line theretofore in operation in Shandon, and in case the time between cars on this line should exceed fifteen minutes for the regular schedule the franchise granted should cease to exist, and the fare should never exceed five cents. The ordinance also contained certain stipulations as to the maintenance of the streets and that at least two electric lights should be maintained at three

points named as directed by Town Council. The ordinance further provided that the Annex Company should file its acceptance in writing, which was duly done on August 1, 1910.

Shandon Annex Company entered into a written contract on June 30, 1910, with Dr. W. B. Burney whereby it was agreed that the Annex Company and Burney should each deposit a sum of money, not more than $6,000.00, in the National Loan & Exchange Bank to the credit of a trustee to be used for the construction of the Shandon Annex street car line above mentioned. Dr. Burney also agreed to do some extra grading at his own cost. This agreement refers [fol. 194] to the contract between the Annex Company and the railway company dated May 30, 1910.

The Shandon Annex line above referred to appears to have been completed in accordance with the aforementioned contract. The evidence shows that Dr. Burney and the Annex Company each put up the sum of $6,000.00 which was expended in accordance with the contract, and Dr. Burney did the extra grading at his own expense as he had agreed. The line was completed and operated by the Railway company until sometime in 1926 when it was discontinued pursuant to permission granted by the Railroad Commission, to which further reference will hereinafter be made. Mr. William Elliott, who at one time was General Manager of Columbia Railway Company, testified that a deed was tendered by Shandon Annex Company for the line in question, but that the railway company declined to receive it because the deed required the railway company to accept the Shandon ordinance providing for a fifteen minute schedule and containing other onerous obligations. He also testified that the railway company never did accept or agree to the Shandon ordinance. He further testified that he had no dealings with Dr. Burney and did not know him in the transaction, although he afterwards learned that Dr. Burney had put up the money above mentioned. The evidence shows that Shandon Annex Company is now in bankruptcy. The testimony of Mr. Elliott is substantially confirmed by Dr. Burney, although he evidently thought his transactions with the Annex Company were communicated to the railway company. The respondents claim that the Shandon Annex line is not owned by them or any of them.

The construction of the Hyatt Improvement Company line with its terminus in front of Columbia College grew out of an agreement between Mr. F. H. Hyatt and the Board of Trustees of Columbia College, under which the college was removed from the city and new buildings therefor were constructed on lands purchased from Mr. Hyatt north of Columbia. This is a college for women with an attendance of [fol. 195] over 300. As part of this agreement street car tracks were to be built to the college site. This agreement was made in 1903 and the college was built within two years. Pursuant to this agreement the Hyatt Improvement Company line was constructed and was operated for a time by Mr. Hyatt or this company. Thereafter it was continuously operated by the Columbia Railway Company until the cessation out of which this litigation arose. All of this appears from the testimony of Dr. E. O. Watson, former President of the Board of Trustees. It also appears from his testimony that the continued operation of street cars was and is deemed of vital importance to the college, especially on account of its location.

Aside from the foregoing with reference to Columbia College, there was a good deal of testimony to the effect that the development companies already referred to, or some of them, through their agents made representations to purchasers of their property that the transportation system would be permanent, and there was also evidence that certain of the property would not have been purchased if it had not been situated on the street car lines. Mr. W. M. Addison, until recently one of the councilmen of the Town of Eau Claire, testified that he bought property in this town possibly as early as 1909 and some since, and that he took over a contract for a lot made with J. C. Townsend by Suburban Homes Company (which seems to have fostered the building of the Suburban Transit line, although there is very little to be found in the testimony about it), and that this contract said "they would give us street car service within one year from the sale of the lots, at the beginning of the sales of these lots owned by Suburban Homes Company, and that the fare would never exceed five cents." This was his recollection of the contents of the contract, as it had been destroyed. With this single exception, no purchaser

claimed any written contract with any development company guaranteeing street car operation, expressly or impliedly. Nor did the deeds contain such a guarantee.

[fol. 196] Dr. S. C. Byrd, President of Chicora College for Women, testified that he bought a new site for the college in the Shandon Annex property from Dr. Burney, paying therefor $169,200.00; that the street car line was being operated at that time, and that he regarded this as a very material consideration; that he acted on the assumption that the company would in good faith operate the cars, but that there was no statement to this effect made by any officer of the company. It appears that while some preparatory improvements have been made on this property the college has not yet been built. Dr. Byrd also testified that Dr. Burney had discussed with him his contract relating to the street railway.

The Referee thinks it clear from the foregoing rather sketchy statement of the evidence on this phase of the matter that these suburbs were measurable built up by the co-operation of the development companies and the street railway company. The extensions were primarily beneficial to the development companies, for it enabled them to sell and develop their property and this of course is the reason they paid or advanced the cost of construction; but the transactions resulted in reciprocal advantages to the railway company, permitting it to extend its system and enlarge its business. Those who bought and improved property in these suburbs naturally assumed at that time that the street railway would be permanent.

As already stated, the ordinances of the City of Columbia permitting Columbia Railway Company to construct and operate an electric street railway were originally adopted October 11, 1892, and it appears from the evidence that the electric cars commenced operation in the spring of 1893. As above indicated, numerous extensions were constructed and acquired from time to time, the last extension or rerouting being in the year 1921. The system now consists of about thirty miles. In the meantime, the suburbs of the city were building up and becoming more or less populous. The evidence shows that the inhabitants of Colonial Heights, Eau Claire and Arden are about 4,000 in number.

[fol. 197] The city grew from about 15,000 in 1890, to per-

haps more than 50,000 at the present time. When trolley cars first came in use they were popular, not only for business but for pleasure, and the testimony shows that for a considerable period of time pleasure travel constituted perhaps the most profitable part of the company's business. Due, however, to the advent of automobiles, and other causes, pleasure travel ceased on the company's lines as early as 1912, according to the testimony of Mr. Alfred Wallace at one time superintendent of the Company.

In 1922 the street car motormen and conductors entered upon a strike which resulted in the operation of the cars being suspended for two or three weeks. The cause of the strike was the reduction of the rate of pay of some conductors, and after the strike was over the Company would not re-employ these men and refused to recognize the union. The consequence was that the union men and their sympathizers organized a movement which brought the jitney into the city. They got out a badge which they wore bearing the inscription "We walk." From that time on a considerable number of jitneys were operated in the city under municipal licenses. The jitney invaded many other cities without any such abnormal cause. The so-called jitneys, as is well known, are usually cheap or secondhand automobiles carrying passengers at the nominal rate of ten cents; at first a "jitney" or five cents. They appear to be rather free lances in the arena of transportation, being operated without much system or responsible control. They are to be distinguished from transfers which charge a much higher rate and have definite stands. The evidence shows that the jitney licenses from 1922 to 1927, both inclusive, were numerous, and in some of these years amounted to more than 200. The testimony of Mr. Hoefer, a member of the City Council of Columbia, was that no licenses for 1928 had then been issued, but that the licenses for 1927 had been temporarily continued. After the strike the patronage of the street cars was very materially reduced, and heavy operating losses were sustained. But the books show that the business had been conducted at a loss for the two [fol. 198] years preceding the year of the strike. The service was, however, continued without cessation until on or about June 8, 1926, when the Railroad Commission permitted the temporary discontinuance of several of the lines.

Before this partial discontinuance there had been many very interesting developments and changes with reference to the business and property of the Columbia Railway, Gas & Electric Company. It will be recalled that under the charter of this company it was empowered to engage in the business of furnishing gas in the City of Columbia and vicinity and in the business of furnishing electricity throughout the State, and for a long period of years it enjoyed in the City of Columbia and its environs a monopoly of the gas, electric and street railway business. The ordinances of the City, however, show no grant of any municipal franchise for furnishing either gas or electricity. There are several ordinances incidentally relating to the gas and electric business, but they are merely general police regularions applicable to all companies having poles, wires or mains in streets. It is manifest that the only franchises held by the company relating to gas and electricity are those derived by it from a State charter or charters. These was testimony that the Town of Eau Claire had passed some ordinance allowing Broad River Power Company to lay gas mains, but this circumstance has no bearing on the case.

It is proper to state at this point that the gas business was not conducted directly under the charter creating the consolidated company, but that this business originated long prior to the street railway business. Columbia Gas Light Company was incorporated by legislative charter in 1852, 12 Statutes at Large, 167 and 168. The charter provides that this corporation shall have full power and authority to manufacture, make and sell gas and to furnish the same as may be required in or near the Town of Columbia, and also to erect such poles and hold such real or personal estate as may be requisite or necessary to carry on its busi- [fol. 199] ness. There were two leases made by this company to Columbia Railway, Gas & Electric Company covering all the property of the lessor, both real and personal, including gas mains, etc.; the earlier of these leases was dated June 30, 1911; and under these leases the railway company conducted the gas business continuously. The railway company acquired all the stock of Columbia Gas Light Company, but just when this occurred does not appear from the evidence.

Sometime during the year 1924 W. S. Barstow and his associates, well known in this sphere of enterprise, became interested in the public utility business of the City of Columbia, and during this year acquired all or substantially all of the capital stock of the Columbia Railway Company. The testimony is to the effect that the prospects appealed to them because there was an acute shortage of power in this locality, but unusual sources for its production in connection with the Columbia Canal and otherwise. At that time the Canal Commission appointed by the General Assembly was functioning for the purpose of settling the controversy between the State and the Columbia Railawy Company relating to this canal, a much vexed problem, the Barstow interests organized a corporation under the laws of this State under the name of Broad River Power Company for the purpose of acquiring the stock of Columbia Railway Company with the intention of enlarging the business by establishing new and improved power developments and otherwise. The charter was granted by the Secretary of State under the general law on July 19, 1924, and was amended on November 14, 1924, so as to increase the authorized capital stock to $20,000,000.00. The actual stock finally issued, both common and preferred, was $8,138,-900.00. Bonds were eventually floated to the extent of about thirteen million dollars. The general nature of the business proposed to be done by this corporation is set out in the charter at great length, including, among many other things, the building, constructing, acquiring by purchase, lease, consolidation, merger or otherwise, and operation of street railways, etc.

[fol. 200] The representatives of the Barstow interests entered into negotiations with the Canal Commission for the settlement of the canal controversy, and after numerous conferences a settlement was agreed upon. On July 17, 1924, The General Finance Corporation, one of the Barstow companies, addressed a proposal to the Commission for the settlement of the canal controversy, submitting therewith a draft of two bills to be enacted by the Legislature, one a bill to settle the canal controversy, and the other a bill authorizing Columbia Railway, Gas & Electric Company and six other corporations subsidiary to it, including Columbia Gas Light Company, to merge or con-

solidate with, or to sell, transfer and convey to any one or more of them or to the Broad River Power Company all or any part of their respective properties, assets, franchises, charter or other rights, etc. The latter bill, which was subsequently enacted, is frequently called by the petitioners the merger act and by the respondents the enabling act. To avoid confusion it will hereafter be called the merger or enabling act.

The business terms of the bill settling the canal controversy were finally adjusted and agreed upon, and the Commission recommended to the General Assembly a settlement of the rights of the State in and to the Columbia Canal in accordance therewith. The final draft of the settlement bill as submitted by the Barstow interests contained a recital that the General Assembly had passed the merger or enabling act, but at the instance of the Commission this recital was stricken out. After the form of the settlement bill had been finally agreed upon the members of the Commission signed letters addressed to Columbia Railway, Gas & Electric Company in which they stated that they approved both of the bills "in the forms submitted to us and as amended by us this day, and thereafter agreed to by you." They further stated in these letters that since the bills were now satisfactory they would recommend their passage and approval. The act settling the canal controversy was duly [fol. 201] passed by the General Assembly and was approved March 24, 1925, Acts of 1925, page 852. The merger or enabling act was duly passed by the General Assembly and approved March 19, 1925, Acts of 1925, page 842.

Mr. W. D. Barnett, who was a member of the Canal Commission and its Secretary, testified in regard to these negotiations. He says that no formal minutes were kept of the meetings of the Commission, but that his recollection was that the purchasers of Columbia Railway, Gas & Electric Company wanted the merger or enabling act for financial reasons, and that while the members of the Canal Commission took the view that they had no authority with reference to this act they were willing to assist the Barstow Company in getting their financial matters straight as a matter of accommodation. "Someone asked if the purpose was not to eventually stop the street cars. They stated

the object was to enable them to finance the operations here and not to stop the street cars—that is my recollection of it." He testified further that some member of the Canal Commission said, "we have nothing to do with that phase of it, that wasn't the duties of the Canal Commission." There is no reference made in the act settling the canal controversy or in the contract therein set out to the merger or enabling act.

The testimony in behalf of the respondents tends to show that it was very desirable to have the street railway property separated from the rest of the business in order to do the financing necessary for the contemplated developments. It was said that traction securities are regarded very unfavorably by the public, and public utilities with a losing traction department are also handicapped, and that hence it would have been very expensive to have done this financing without the separation. Assuming all this to be correct the Referee concludes as a matter of fact that the merger or enabling act was not a part of the canal settlement. Waiving the question as to whether the Commission as a matter of law had anything to do with the terms of the mer- [fol. 202] ger or enabling act, it is clear from all the facts and circumstances that their understanding was as stated by Mr. Barnett. If they recommended the passage of this act they acted individually and independently of their official duties in reference to the settlement of the canal controversy, and it seems to the Referee that they made this plain when they struck out the reference to the merger or enabling act in the settlement act. This conclusion is far from imputing fraud to the respondents and is not so intended. The Referee infers from the situation that if the Canal Commission had considered their recommendation of the merger or enabling act as a part of their official duties they would have ascertained more fully its possible effect.

Before and after the settlement of the canal controversy and the adoption of the acts just referred to several bond issues were negotiated by Broad River Power Company. The circulars relating to these bond issues, or some of them, were introduced in evidence, and they included statements made in the name of Mr. W. S. Barstow, President. There were also introduced in evidence statements relating to these bond issues taken from The Commercial and Finan-

cial Chronicle of New York City, a bond journal. Mr. J. P. Campbell, who was Treasurer of both Broad River Power Company and the Columbia Railway Company, testified that the statements in the name of Mr. Barstow were prepared by the witness, and that while the references in the bond journal were news items rather than advertisements the information therein contained was presumably procured from his office directly or indirectly in a lawful manner. Hence, notwithstanding the objections of respondents the statements contained in the bond journal are considered in evidence as well as those in the circulars. It will not be necessary to recite them all, but in one issue of the bond journal it was stated that Columbia Railway, Gas & Electric Company and its subsidiary, The Parr Shoals Power Company, had been in successful operation over a long period of years. Also, in one of the issues (January 3, 1925) there was a statement giving the consolidated earnings of the several companies indicating a very profitable opera- [fol. 203] tion, but showing upon an analysis thereof an operating loss on the railway department. It was stated in the circular dated November 10, 1924, that Broad River Power Company was organized in July, 1924, for the purpose of acquiring the entire outstanding common and preferred stock of the Columbia Railway, Gas & Electric Company, which owned or controlled all the outstanding common stock of The Parr Shoals Power Company and the Columbia Gas Light Company; that Columbia Railway, Gas & Electric Company had been in active operation in Columbia since 1891, and that it was intended that the Broad River Power Company would effectuate the transfer to itself of all the physical properties, franchises and other assets of Columbia Railway, Gas & Electric Company and its two subsidiaries above mentioned "(except that the street railway properties may be held in a separate ownership)" after expected authorization by the Legislature of South Carolina at its next session in January, 1925.

Purporting to proceed under the authority of the merger or enabling act there was conveyed to Columbia Railway, Gas & Electric Company all the property of its subsidiaries by deed or deeds dated June 15, 1925, and on the same day Columbia Railway, Gas & Electric Company, also purporting to act under the authority of the merger or enabling

act, executed a deed to Broad River Power Company wherein and whereby it conveyed all the property theretofore owned by it, including that which it had acquired from its subsidiaries on that day, excepting only its franchise to operate and maintain its street railway within and without the City of Columbia and other municipal corporations in Richland County; all easements, rights-of-way, rights and privileges necessary for operation of the street railway; all street cars, tracks, ties, overhead conductors, brackets, spans, tools, repair equipment, material and supplies, used or useful exclusively for street railway purposes; and a certain strip of land thirty feet in width. The evidence shows that the property of the subsidiary corporations was conveyed to the railway company for the reason that its outstanding mortgage carried as a part of the security the [fol. 204] stocks of the subsidiaries, and it was, therefore, necessary to put the title to the property in the railway company so as to bring it under the lien of the mortgage, in lieu of the stocks. The deed to Broad River Power Company expressly includes "all poles, including those used exclusively for street railway." The evidence further shows that the poles carrying the trolley wires for the operation of the street cars also carry the wires for the transmission of electric current, or that this is true to a large extent. There was also included in the conveyance to Broad River Power Company the substation and the car barn which, of course, had been used at least principally in connection with the street railway business.

Broad River Power Company upon its organization issued its own stock to the extent of $3,449,300.00 in exchange for the common stock of Columbia Railway, Gas & Electric Company and its subsidiary, The Parr Shoals Power Company. There was also paid in for common stock at the time of the organization $449,000.00 in cash. The total amount which has actually been paid in to Broad River Power Company for common stock in money is $2,129,400.00. The physical property acquired by Broad River Power Company under the deed from Columbia Railway Company was set up on the books of the power company at the same figures as those carried on the books of the railway company which was about ten and one-half million dollars. The evidence shows that independent en-

gineers had made a report as to the value of the property, and that they valued the physical property of Columbia Railway Company on the basis of reproduction as of May 31, 1924, at $12,227,000.00, of which $2,250,000.00 represented the railway department. Mr. R. D. Jennison, Vice-President, estimated the reproduction cost of the railway system as of July 31, 1925, at $1,750,000.00 and salvage value at $100,000.00.

As a part of the transaction under which the conveyance was made Broad River Power Company assumed the outstanding obligations of the railway company except those arising from and in connection with the street railway property. The evidence also shows that Broad River Power [fol. 205] Company did in fact assume the payment of the entire outstanding bonded indebtedness of the railway company. This is shown by the parol testimony, and it is so stated in the schedules filed in the bankruptcy proceedings; although the resolution of the stockholders (Exhibit A-42) under which the deed was made appears to except from the assumption of indebtedness not only the debts arising from and in connection with the street railway property, but also the payment of the bonded indebtedness mentioned in the resolution which it seems was in excess of $3,000,000.00. It is, therefore, concluded that notwithstanding the stipulation in the resolution the bonded indebtedness was actually assumed. According to the testimony of Mr. J. P. Campbell, the Treasurer of both companies, the difference between the value of the property received and the obligations assumed by the Broad River Company was $3,682,394.00, eliminating the stock agreed to be surrendered. After the conveyance the common stock of the railway company was reduced from 20,000 shares to 217 shares, all of which was and is owned by the Broad River Power Company; and the preferred stock was reduced by 8,520 shares to 433 shares, of which Broad River Power Company owns 324 shares. The remaining 109 shares of preferred stock are in the hands of the public, but $100.00 per share was deposited by Broad River Power Company in a bank in New York City to take care of this outstanding preferred stock.

Since the conveyance of June 15, 1925, the same persons have been executive officers of both the Broad River Power Company and the Columbia Railway Company, (or at least

this is substantially the case), and the directors have been largely the same. The returns filed as required by law for the years 1925 and 1926 show that the same persons were President, Secretary, Treasurer, Superintendent and General Manager, respectively, of both companies. The evidence further shows that so far as the corporate management is concerned the railway business was carried on after the conveyance almost exactly as it had been prior thereto. [fol. 206] Before the conveyance the railway business was done as a department of the general business of the company, and the books were so kept. After the conveyance, to all intents and purposes, the business was carried on as a department of the general business conducted by the Broad River Power Company, with the possible exception of the formal exchange of certain checks, that is to say, there were checks drawn by the railway company to the power company for the power used in the operation of the street car system, and the power company issued a number of checks to the railway company to assist it in its operations, the same amounting in the aggregate to $115,000.00 or thereabouts. In connection with the latter checks the evidence shows that they were merely charged up as an indebtedness of the railway company and were not represented by notes or other obligations.

After the conveyance the current liabilities of the railway company exceeded its current assets by the sum of $24,078.56. This, of course, does not take into account the value of the railway property itself. The testimony of respondents is to the effect that the railway company was left in a solvent condition, but that it was not able to run without assistance and that the assistance rendered was such as would naturally be given by a parent corporation to its subsidiary. The railway company later filed its petition in bankruptcy alleging insolvency.

The testimony further shows that in the year 1925 a fairly substantial amount of money was expended in the way of making repairs and improvements to the railway system, but there were no purchases of additional cars or anything of that nature. Mr. J. P. Campbell, Treasurer, testified that from the beginning of their investigation they concluded it would be a benefit to eliminate the street railway from the Broad River Power Company as a corporate unit and that it was their intention to do so if possible,

having previously stated that the financing required for the proposed developments was "handicapped by the doing of a street railway business at a loss." He said further: "We had hoped that with our management and such [fol. 207] economies as we might be able to effect to possibly get it on a selfsustaining basis. We did not have the expectation that it would be a money maker. We tried to make it pay. We hoped we could break even on the situation." The testimony of Mr. A. M. Lumpkin, a witness for petitioner, shows that in November, 1925, Mr. R. L. Peterman, Vice-President of both corporations, and perhaps some other representative, said that the street car operation was going to stop, and that it was upon this statement a bus company business was commenced in the city. Mr. Peterman testified before the Railroad Commission, but did not testify before the Referee.

Before and after the conveyance above mentioned the railway company made numerous applications to the Railroad Commission for relief on account of its alleged large and continuing losses. Several hearings were held and various expedients adopted. One of the orders of the Commission, for example, the same being dated December 11, 1925, allowed fares to be charged on the basis of a zoning system. On June 8, 1926, the Commission passed another order authorizing a temporary discontinuance of numerous lines, including the Shandon Annex line, and raising the fare to ten cents. The testimony shows that all orders were observed by the railway company until March 11, 1927, when the entire street railway system was discontinued without the authority of the Railroad Commission or any other public body.

This discontinuance not having been authorized, the Railroad Commission on March 16, 1927, ordered the company to show cause on March 18, 1927, why it should not be penalized, and on that day an order was passed requiring the restoration of the limited service theretofore in effect. Upon the petition of the railway company, however, a rehearing was ordered. In this petition the railway company prayed for permission to discontinue its entire service, alleging that its losses had continued to the point where this was necessary. Broad River Power Company, The South Carolina Gas and Electric Company and Carolina

Transit Company (a bus company) were made parties to [fol. 208] the proceeding. The Commission after the hearing passed an order dated April 7, 1927, permitting the discontinuance of the entire street railway service. The Attorney-General filed a petition for a rehearing, which was granted. The rehearing resulted in an order dated July 28, 1927, requiring the Columbia Railway, Gas & Electric Company to restore the street car service required by orders of the Commission in effect at the time of the discontinuance within twenty days after service of that order. This order was granted upon a majority vote of the Commission, four being in favor of the order and three dissenting. The petitioners offered in evidence all the proceedings before the Railroad Commission, including the testimony taken by that body. The orders of the Commission were introduced without objection and the Referee ruled at the hearing that the opinions upon which they were based should be included as a part thereof, but that the testimony taken before the Commission could not be introduced as the basis of the decision of this case, since this proceeding is not such a proceeding as is provided by the Act of 1922 relating to review by the Court of Common Pleas of the decisions of the Railroad Commission. The petitioners then proved by competent witnesses by way of admissions numerous statements made by the officers and agents of the railway company and the power company in the hearings before the commission. The entire testimony taken by the Railroad Commission was, of course, received as objected testimony, and may be considered by the Court if they deem it proper.

On June 7, 1927, the City Council of Columbia adopted a resolution stating, among things, "that the present owners of the street railroad system be requested to immediately resume operation with the assurance from City Council that they will immediately pass and attempt to rigidly enforce all needful rules, regulations and Ordinance, as it may legally pass, as will afford to the street car service full protection in such service, and relieve said street car service from any and all competition." This resolu- [fol. 209] tion further provided that a copy be forwarded to Broad River Power Company, "whom Council is advised are the owners of a majority of the stock of Columbia

Railway, Gas & Electric Co. and that they be requested to advise Council as to whether or not they are willing to resume operation." Pursuant to this resolution the representatives of Broad River Power Company were requested to meet with the City Council in conference in regard to the matter, and Mr. H. L. Peterman, Vice-President of both companies, with two others whose names are not given, met with Council and discussed the matter. The result was that Mr. Peterman stated that he was not willing to recommend to his superior officials the restoration of the street car service; and the same has not been restored in whole or in part since March 11, 1927.

The evidence clearly shows that for a number of years the street railway business in the City of Columbia has been operated at a heavy loss. Exhibit A-19, which is a summary from the books of the railway company, indicates that the operating loss before depreciation or interest from January, 1920, to February, 1927, inclusive, amount to $675,199.47. This statement includes charges for "power purchased," which is an interdepartment or intercompany charge, and petitioners contend that this charge should be eliminated or at least greatly reduced. There was also testimony that the power company charged the railway company a much higher rate than it did the Pacific Mills. The Referee does not consider it necessary to discuss the testimony pro and con in regard to this rate. Even at the minimum rate the losses run into very high figures. This statement also includes for the period since the conveyance to Broad River Power Company a charge for pole rental. The following is a statement by years compiled from Exhibit A-19 showing the losses, including "power purchased" and excluding "power purchased"; and deducting the en-
[fol. 210] tire amount for pole rental:

Years	Losses, including "power purchased"	Losses, excluding "power purchased"	Gains, excluding "power purchased"
1920	$94,533.64	.....	$9,510.96
1921	49,232.73	.....	17,892.19
1922	144,513.21	$91,906.41	
1923	102,477.28	42,164.38	
1924	138,047.05	80,834.05	
1925	87,812.13	41,651.33	
1926	47,630.35	20,125.75	
Jany. and Feby., 1927	10,953.08	7,052.48	
Totals	$675,199.47	$283,734.40	$27,403.15
Less gains 1920 and 1921		27,403.15	
		$256,331.25	
Less pole rental		3,498.89	
Total losses, excluding "power purchased" and pole rental		$252,832.36	

Of course, it would not be proper to eliminate the power charge entirely, because the actual cost of the power would in any view of the case be a proper charge. This also might apply to some charge for pole maintenance. It will be borne in mind that the foregoing statement covers operating losses only without any provision whatsoever for depreciation and without any allowance whatsoever for interests or earnings on the investment. The testimony on behalf of respondents was that at least $50,000.00 a year would be a proper charge for depreciation. Even if this charge for depreciation is reduced by half the total of such charge over the period of years would amount to about $175,000.00, which would raise the entire loss on the basis of the above minimum statement to over $400,000.00, with no provision for any return on the investment. It will be noted that the losses appear to have commenced in 1920, although the strike above referred to was not until 1922. It is true that the above statement shows that eliminating the power purchased there were small gains in 1920

and 1921, but this would be entirely wiped out by a mimimum charge on account of depreciation.

[fol. 211] As has already been stated, there is contained in one of the issues of the bond journal a tabulation showing the earnings of the subsidiary companies of Broad River Power Company prior to the passage of the merger or enabling act, and this tabulation shows that by deducting the operating revenue of the railway department from the operating expenses there is a loss of $93,927.00 for the years ending June 30, 1923, and 1924. The petitioners lay great stress upon the fact that this statement shows less losses than are now claimed, but the evidence indicates that this statement being a consolidated one did not show the interdepartment charges and that there was no distribution among the departments of the item of taxes. Further, the statement made from the books is based on the calendar year. It may be assumed that the statements upon which the bond sales were negotiated would be drawn so as to make the most favorable showing for the company that could properly be made. Hence, such a statement itself constitutes very strong evidence of the fact of loss. The Referee does not overlook the circumstance that the evidence of loss is contained in the books of the respondents, but they appear on their face to be fair and regular, and there is no reason to doubt their substantial accuracy, especially when all the circumstances are considered.

The petitioners contend with great earnestness that the matter of loss is entirely irrelevant and immaterial, and this will be considered in that portion of this report containing conclusions of law. They further contend that the losses of the street car system have been due in some measure to inadequate maintenance, inefficient management; and encouragement of competition during the latter part of the operation. The testimony in behalf of respondents shows that the street railway system had been seriously undermaintained before the Barstow interests entered the public utility field in Columbia; "that the losses have been so large that the amount of maintenance which could be done and which was done had been totally inadequate." The testimony is further clear that during the last months [fol. 212] of the street car operation both the cars and the tracks were much below standard. The respondents take

the postion that while some considerable expenditures for maintenance were made after the commencement of the Barstow management a very large additional amount would be required to rehabilitate the system, and that the ultimate deficit would have been much greater if such additional moneys had been invested. The efforts of the Railroad Commission to produce a larger revenue by rate provisions and economies do not appear to have accomplished the desired result, although respondents seem to have given them a fair trial. The foregoing statement shows a considerable reduction in the losses for the year 1926, but respondents claim that this was not due to increased patronage but to rigid economy and curtailment of service. On the other hand, after the large curtailment in 1926 the losses for the remainder of that year do not appear to have decreased.

It appears from the evidence that under an arangement between Columbia College and the street car company cars were furnished for the transportation of students to and from Church on Sunday at 14 cents per passenger for the round trip. Dr. Guilds, President of the college, testified that after this arrangement had been in effect for some time he received a bill for 20 cents per passenger for the round trip, and that he took the matter up with Mr. F. K. Woodring, who was the General Manager of both companies, and that Mr. Woodring informed him that they did not care for the business even at the increased rate. It was stated in the evidence that Columbia College was one of the best customers of the street car system. The testimony was undisputed that Mr. Woodring stated that the Town of Eau Claire ought to let the busses come in because "competition is the life of trade." The testimony of Mr. W. M. Addison, who was a member of the Town Council of the Town of Eau Claire, was to the effect that they kept the busses out of that town. He further testified that Mr. Woodring told him that if the people of Eau Claire and Colonial Heights would assist the railway company in get-
[fol. 213] ting the Railroad Commission to free the company from operating some of the other lines it would be to their advantage, beause the three lines passing through Ridgewood, College Place and Colonial Heights were paying and

could be run on indefinitely. This was in May, 1926, and the citizens of this neighborhood did assist the company in getting the Railroad Commision to discontinue some of the lines on June 8, 1926. Mr. Woodring did not testify before the Referee, and it appears that he was not connected with the companeis at the time of the final discontinuance.

One of the contentions of the petitioners was that after the Barstow management took charge they brought a bus company into the city, subsidized it financially and encouraged its competition. The testimony of Mr. A. M. Lumpkin, a witness in behalf of the petitioners, shows that while the Barstow interests did not in fact bring the bus company into Columbia they did thereafter give it aid and comfort. This system was operated by Carolina Transit Company, which was organized under the supervision of Mr. Lumpkin for the purpose of entering the transportation field in Columbia upon the representation that the street railway system would be discontinued. The testimony makes it clear that after the bus system commenced it did obtain financial aid directly or indirectly from Broad River Power Company to a considerable extent. There was also evidence that the busses used the same routes as the street cars, going a little ahead of or a little behind them; and that when the street car system abandoned some of its routes the busses would follow suit. The busses also subsequently entirely discontinued operation, the testimony of Mr. Lumpkin being that their business was destroyed by the street cars and other competition.

The respondents claim that any encouragement they may have given to the bus company was due to their desire for the city to have some system of transportation when the street cars were discontinued which they saw would become necessary. They also contend that the failure of the street car system was due in part to the peculiarly adverse con- [fol. 214] ditions which had arisen in Columbia during a long period of years, including the almost unbridled competition allowed by the city, coupled with the fact of decreasing street car patronage especially in the smaller cities on account of the well nigh universal use of private automobiles, such a loss of patronage being also accom-

panied by increased labor cost. It is true that the city did permit the operation of jitneys on a large scale.

The opinion of the Circuit Court of Appeals in the bankruptcy case, delivered by Judge Waddill, contains the following with reference to street railway companies:

"In the last quarter of a century there has perhaps been no class of property subject to greater vicissitudes and financial embarrassments than these large and valuable interests scattered throughout the entire country, and if the right of bankruptcy existed in behalf of those interests the same would have been constantly availed of."

There was, however, introduced in evidence a statement from a public utility publication that in 1926 trolley car travel increased greatly over the preceding years, and that it was, no doubt, due in part to the difficulty of getting parking space for automobiles, and that this tends to cause people to return to the use of street cars. One of the witnesses for the respondents said that while there had been an increase in 1926 there had been a decrease in 1927. The Railroad Commission in their report to the General Assembly dated 1926 stated that the interurban railways operating in South Carolina were in reasonably good financial condition, but this was not the case with the other street railway systems "which perform service in municipalities, and in some instances to and from localities near the municipalities they are expected to serve," and that it must be general knowledge "that they are, to say the least, financially sick, with the greater number of them desperately ill. How long some of these companies can continue to perform the service for which they were intended only the future can decide." The latter statement might warrant the expression used in a recent magazine article, to wit, "Troubled Trolleys." How-
[fol. 215] ever, the evidence shows that trolleys are operating in Charleston, Greenville and Anderson, South Carolina, in Columbus and Augusta, Georgia, and in Wilmington, Raleigh, Asheville and Charlotte, North Carolina, and in Montgomery, Alabama. Mr. Hoefer, one of the city councilmen of Columbia, testified that he knew of no other city of the size of Columbia which did not have a street car service. He further gave it as his opinion that if competition were removed the Company could operate all right. His

testimony shows that it was his view that the company should be willing to operate even at some loss on account of its other business, and that its rates ought to be figured out on this basis.

The Referee is constrained to the conclusion as a matter of fact that after taking into consideration all of the evidence the street car system in the City of Columbia has been running at a devastating loss over a period of years, and that this loss commenced some time before the intervention of the Barstow interests. Not only were the investors receiving no return from the railway system, but without allowance for depreciation, the "out of pocket" loss was running up into high figures. It was testified on behalf of respondents that it would cost from $550,000.00 to $600,000.00 expended over a period of two or three years to put the system in operation, and that of this amount $125,000.00 would have to be expended in a very short period in order to operate a few cars; and that about $65,000.00 would be necessary to make repairs on the tracks. Col. J. M. Johnson, a highly competent and disinterested engineer, testified in behalf of petitioners, however, that only about $20,900.00 would be required to put the tracks in fair condition. His testimony relates entirely to the condition of the tracks and not to the rolling stock or other equipment. In view of the undisputed evidence as to the depreciated condition of the system it is apparent that some very con- [fol. 216] siderable expenditure would be required for the purpose of bringing the system up to anything like standard.

The losses above mentioned, of course, apply only to the street railway system. The evidence tends to show that the gas business and the electric business have been and are profitable. Broad River Power Company has paid out by way of dividends on its common stock $575,293.50, and on its preferred stock $736,009.75, and its surplus to April 30, 1928, was $753,669.64. It was contended by respondents that taking into account depreciation Broad River Power Company had only earned about four and six-tenths per cent. upon the property used and useful in its business, which was less than it was entitled to as a public utility. Its general balance sheet of December 31, 1927, shows property owned in excess of $19,000,000.00, capital stock (both

common and preferred) over $8,000,000.00, and bonded debt about $13,000,000.00. It also shows that after deducting, among other things, reserves for depreciation amounting to $347,991.22, there was a surplus left as of that date of $635,166.58. This sufficiently indicates a successful and profitable business. Of course, the Referee is not unmindful of the position of the respondents that the returns on the gas and electric business are irrelevant to this inquiry, and this matter will be treated in the conclusions of law.

The foregoing statement while long and tedious does not cover all the minor details of the evidence. But it has been the purpose of the Referee to make the statement sufficiently comprehensive to aid the Court in its review of the facts, and he has endeavored in this survey of the evidence to proceed so far as practicable independently of his views of the applicable legal principles. Of course in the discussion of the law some further recitals relating to the evidence will be introduced. A few references have been made to objected testimony. There were many other objections, most of them being upon the ground of irrelevancy and practically raising the questions of substantive law involved in the case. Hence, the conclusions of law will necessarily dispose of these evidentiary objections. Bearing in mind that the original order of reference suggested the incompleteness of the documentary evidence, the Referee requested counsel to introduce all relevant documents, and he believes the record is as complete as practicable. The entire record is herewith filed.

[fol. 217] Conclusions of Law

The right to furnish a public utility is, of course, a franchise derived from the sovereign power. A franchise is frequently defined as the privilege of doing that which does not belong to the citizens of the country generally by common right. In the case of a public utility the grantee is given permission or authority to furnish some service needed by the public at large, or a substantial portion thereof, at some fair rate of compensation to be paid by the consumers. Usually he has a monopoly, arising either from the terms of the grant or from the circumstances. The

right being granted primarily for the benefit of the public, the interests of the public are paramount. Indeed the holder of such a franchise is sometimes described as a trustee, the theory being that the sovereign power in granting the franchise transfers the power thereby given to the grantee in trust for the people. The transaction amounts to this: The grantee receives from the people the important right of supplying some public service for compensation, involving the devotion of property to that end, and this results in reciprocal obligations. The welfare of the people being the supreme law their interests are the first consideration. On the other hand, the grantee is entitled upon the plainest principles of justice to a fair compensation, but no more. It is true that there is no guarantee that he will receive such compensation, but normally this a condition of his obligation.

It was said in the ancient scriptures that the laborer is worthy of his hire, and this in a case where the service was inspired by the most altruistic motives. Equally sound is the principle laid down in our constitution that private property shall not be taken for public use without just compensation. Private property may be devoted to the public use voluntarily, as where one seeks and obtains authority to perform a public service and uses his property for that purpose; or involuntarily, where his property is, for example, taken under the power of eminent domain. In [fol. 218] either case the right to just compensation remains, resting both on the ethical basis of that fairness governing private relations and the principle that the power of the state shall not be exercised oppressively.

In the case of a grantee of a public utility franchise the right to just compensation, however, may be qualified or abrogated by contract. This is a result of the fundamental doctrine of the liberty of contract. In the parable of the laborers those who had borne the heat and burden of the day received the same pay as those who came in at the eleventh hour, but the complaints of the former were held without justification because they received the compensation to which they had agreed. Another important doctrine is that one may not retain his franchise and escape its obligations, even if he thereby sustains a loss.

These very general principles are adverted to by way of introduction. We apprehend that they will be accepted as substantially correct and broadly relevant to the facts of the case under consideration.

The franchise to operate a street railway in the City of Columbia and its environs was originally appropriately granted by the General Assembly in 1882. The charter act by its terms did not require the consent of the city. The Constitution of 1895 (Art. VIII, Sec. 4) expressly provides that no law shall be passed granting the right to construct and operate a street railway, etc., without first obtaining the consent of the local authorities in control of the streets or public places so to be occupied. There was no such provision in the Constitution of 1868, but there was a stipulation (Art. XII, Sec. 5) that all general laws or special acts creating corporations should regulate the public use of all franchises created under the authority of the State, and should limit the tolls, imposts and other charges under such laws. However, the original street railway company did apply to the city council of Columbia for permission to lay its tracks in the streets of the city and to inaugurate its railway system, and this permission was granted by the [fol. 219] ordinances of 1886, pursuant to which the old horse car system was installed and operated. Incidentally something was said in argument about the interesting historical fact that the State owns the fee in the streets of the City of Columbia, but this does not seem to be of any special significant in view of the decision of the Court in the case of Railroad v. Burton, 67 S. C., 515, in which it was held that under the statute City Council has such control of the streets as is usually exercised by such officers.

The charter act of 1890 conferred on Columbia Electric Street and Suburban Railway and Electric Power Company the authority to construct and operate an electric street railway in the City of Columbia with consent of City Council and to extend the same five miles into the country from the state Capitol. The franchise granted by this act was in 1891 by act of the Legislature conferred upon The Columbia Electric Street Railway, Light and Power Company (this being the name first given to Columbia Railway, Gas & Electric Company), the consolidated company, to which reference was made in the statement of facts.

Pursuant to its charter franchise the railway company in 1892, upon its petition to the City Council of Columbia, received its consent to the operation of the electric street railway; and in 1893 the trolley cars commenced running and continued in operation until the cessation which brought about this controversy. The franchise obtained from the State and confirmed by the City having been received and acted upon by the railway company, reciprocal obligations necessarily arose. In other words, a contract was thereby created. This proposition rightly understood seems to be indisputable. The railway company having thus undertaken to serve the public, under the authority so granted by the public through their agencies, thereby assumed an obligation which could not be thrown off at will. Harmon v. Columbia & Greenville Railroad Co., 28 S. C., 401; Moore v. Railroad Co., 38 S. C., 24; 14 C. J., 161-162.

[fol. 220] The real question in this connection is not whether there was a contract, but the nature of the contract and the extent of the obligations thereby imposed. If the ordinance adopted by the City contained nothing whatever except permission to law the tracks in the streets and operate the railway, as soon as this permission was acted upon, that is to say, accepted, the obligation to exercise the franchise and perform the service came into existence. This, however, would not create a contract to continue the operation of the railway indefinitely or in perpetuity without regard to whether or not reasonable compensation was afforded for the services rendered. A contract resulting in an obligation so onerous as this could not be thus implied. The decisions of the Supreme Court of the United States are clear beyond all doubt that such a contract cannot be elicited from the acceptance of a charter from the State for the operation of a railroad, even where the drastic power of eminent domain has actually been exercised. It follows with equal force that such a contract cannot be elicited from the fact that the consent of the city was sought and obtained as required by the charter.

The following quotation from the somewhat recent decision of the Supreme Court of the United States in the case of Railroad Commission v. Eastern Texas R. Co., 264 U. S., 79, 68 L. Ed., 569, and the authorities therein cited, amply sustain the doctrine above stated, in the judgment of the Referee:

"The usual permissive charter of a railroad company does not give rise to any obligation on the part of the company to operate its road at a loss. No contract that it will do so can be elicited from the acceptance of the charter or from putting the road in operation. The company, although devoting its property to the use of the public, does not do so irrevocably or absolutely, but on condition that the public shall supply sufficient traffic on a reasonable rate basis to yield a fair return. And if at any time it develops with reasonable certainty that future operation must be at a loss, the company may discontinue operation and get what it can out of the property by dismantling the road. To compel it to go on at a loss, or to give up the salvage value, would be to take its property without the just compensation which is a part of due process of law. The controlling principle is the same that is applied in the many cases in which the constitutionality of a rate is held to depend upon whether [fol. 221] it yields a fair return. Brooks-Scanlon Co. v. Railroad Commission, 251 U. S. 396, 399, 64 L. ed. 323, 326, P. U. R. 1920C, 579, 40 Sup. Ct. Rep. 183; Bullock v. Florida, 254 U. S. 513, 520, 65 L. ed. 380, 382, P. U. R. 1921B, 507, 41 Sup. Ct. Rep. 193; South Carolina ex rel. Cunningham v. Jack, 113 Fed. 823, s. c. 76 C. C. A. 165, 145 Fed. 281; Iowa v. Old Colony Trust Co. L. R. A. 1915A, 549, 131 C. C. A. 581, 215 Fed. 307, 312; Northern P. R. Co. v. Washington Territory, 142 U. S. 492, 499, 35 L. ed. 1092, 1099, 12 Sup. Ct. Rep. 283; Com. v. Fitchburg R. Co., 12 Gray, 180, 190; State ex rel. Little v. Dodge City, M. & T. R. Co., 53 Kan. 329, 336, 24 L. R. A. 564, 36 Pac. 755."

In one of the cases above cited, to wit, Bullock v. Florida Railroad Commission, 254 U. S., 513, 65 L. ed., 380, the Supreme Court of the United States in the opinion delivered by Mr. Justice Holmes uses similar language to that already quoted, to wit:

"Apart from statute or express contract people who have put their money into a railroad are not bound to go on with it at a loss if there is no reasonable prospect of profitable operation in the future. Brooks-Scanlon Co. v. Railroad Commission, 251 U. S. 396, 64 L. ed. 323, P. U. R. 1920C, 579, 40 Sup. Ct. Rep. 183. No implied contract that they will do so can be elicited from the mere fact that they have

accepted a charter from the state, and have been allowed to exercise the power of eminent domain. Suppose that a railroad company should find that its road was a failure, it could not make the state a party to a proceeding for leave to stop, and whether the state would proceed would be for the state to decide. The only remedy of the company would be to stop; and that it would have a right to do without the consent of the state if the facts were as supposed. Purchasers of the road by foreclosure would have the same right."

There are many other authorities to the same effect; among them, the opinions of Judge Smith in the cases of Charleston-Isle of Palms Traction Co. v. Shealy, 266 Fed., 406, and Southern Bell Tel. & Tel. Co. v. Railroad Commission, 280 Fed., 901.

The foregoing authorities lay down the rule broadly that the continued operation of a railroad at a loss cannot be required in the absence of a statute or express contract, or to use the language of Judge Smith a "specified contract upon the point." Leaving the matter of statutory requirement for later consideration, is there anything in the ordinances of the City of Columbia which can be construed to create such a contract? We think it has been shown that so much thereof as granted permission to lay the tracks and operate the railway did not engender such a contract. It is true that in addition to the authority given to lay the [fol. 222] tracks upon the streets the original ordinance of 1886 provided that it should be the duty of the company on week days to run a car for passengers at least every hour from 7 A. M. to 9 P. M., and the original charter provided that the company should keep their railway in good order. These stipulations in themselves certainly do not of necessity enlarge the general obligation assumed by the company when it accepted and exercised the franchise. The stipulation relating to the running of the cars is obviously a mere schedule regulation. It related to conditions which existed at that early day and was, of course, subject to reasonable alteration or amendment. It did not even purport to deal with the question of the general duty of the company to operate, being on the face of it merely regulatory. (It was so construed by City Council, for during the pendency of

this proceeding an ordinance was adopted providing for a thirty minute schedule). It is true that in the case of San Antonio Street R. Co. v. State, 90 Tex., 520, 35 L. R. A. 662, the Court said in considering somewhat similar language in an ordinance involved in the case of Potwin Place v. Topeka R. Co., 51 Kan., 609, 37 Am. St. Rep., 312, that such language might be considered words of command and might be construed as making it the duty of the company to continue to operate every part of its line. The decision in the Potwin case, however, was evidently not based on this language; and in that case there was a dispute as to the routes to be operated in a city, and the court said: "It is not seriously contended that the old line is unprofitable."

The following language from the decision of the Supreme Court of the United States in the case of Railroad Commission v. Eastern Texas R. Co., 264 U. S., 79, 68 L. Ed., 569, already quoted from, appears to be conclusive on this point:

"One of the statutory provisions relied on is found in article 6676 of the Revised Civil Statutes of 1911, and requires that on all railroads 'carrying passengers for hire' there shall be at least one passenger train a day, Sundays excepted; that these trains shall stop at stations a sufficient time to discharge and receive passengers, and that, 'if so [fol. 223] many are run,' four of these trains, going each way, shall stop daily, Sundays excepted, at county seats. This is nothing more than a regulation of passenger service on roads which are in operation and engaged in that service. It does not purport to impose an unconditional duty to operate, or to carry passengers, but requires that where and while a passenger service is maintained, it shall conform to the standards stated. Such a provision falls far short of subjecting a railroad company, through charter contract or otherwise, to an absolute duty to operate its road for the full charter period, even after it becomes reasonably certain that the operation will be at a pronounced loss."

In this connection, petitioners suggest, as an additional reason for their position, the provisions of Sec. 5059, Vol. 3, Code 1922, (adopted in 1920). An examination of that section, however, will show that it clearly comes within the

reasoning of the Court last above quoted, and hence does not appear to warrant further consideration.

There is a further provision in the ordinances of the City of Columbia entitled in the Revised Ordinances "Penalty for Failure to Run," which is a part of the original ordinance adopted in 1886, and provides as hereinbefore set forth that if the company shall neglect or refuse to run their passenger cars "as herein provided" for a period of three months, then the corporate authorities of the city might rent the road at public outcry for account of the company for a period of twelve months. This provision of the ordinance is somewhat incomplete, because there is no stipulation whatever as to what should be done after the period of twelve months elapsed, in the event the road should be rented for account of the company. But there is another provision in this section to the effect that if the road be not rented and should be idle for twelve months, then the city authorities might have the road taken up and the material sold to the highest bidder, and after deducting the expenses of taking up the road, selling the material and repairing the streets the balance, if any, should be paid to the legal representatives of the company. Did these penalty provisions so enlarge the obligations of the contract as to require continued performance at all events without regard to a fair return on the investment or other circumstances? [fol. 224] It seems to the Referee that they did not. It must have been recognized by the city authorities when the ordinance was drawn that the company might at some time fail or refuse to continue the operation, either with or without legal excuse, and this might result in the tracks being left in the streets for an unreasonable length of time, thereby obstructing the streets and perhaps preventing some other company from undertaking the business, or the tracks might be taken up and the streets left in a bad state of repair. Hence, the city authorities endeavored to protect themselves against these contingencies. Indeed, these provisions amount to little more than a declaration of what would be implied by law. If the company even for a good and sufficient reason had dismantled its system and taken up its tracks, it would have been its legal duty to restore the streets to their former condition. Furthermore, upon abandonment of operation there was no legal right to per-

mit the streets to remain encumbered with the tracks. It, therefore, does not seem to the Referee that the penalty clause adds to the original obligation of the contract. Not only did it not enlarge the obligation of the contract, but it did not lessen it. In other words, if the company failed to operate its system without legal cause it could not say to the city, "we will let the road stand idle for twelve months, and you can then take up the tracks and proceed under the provisions of the penalty, this being the full extent of our responsibility." Such a conclusion appears to be unconscionable and should not receive the sanction of the Court in the absence of controlling authority. The so-called penalty clause was evidently not contemplated by the parties as being the full measure of liability. It is quite true that in some cases parties agree as to the consequences in the event of default in the performance of a contract, and if the agreement in this respect is clear and unambiguous as well as reasonable, there is nothing for the Court to do but to enforce the contract as made. Certainly there is nothing to prevent parties from stipulating that in the [fol. 225] event the main obligation of a contract is not performed, upon payment of a specified sum or the doing of a certain act the contract shall be fully satisfied. And it is, no doubt, true that in some cases where a penalty is provided a Court of equity may grant a more adequate remedy upon the ground that the penalty was not intended for the benefit of the defaulter. We conclude that the so-called penalty provided for in the ordinances was obviously not intended as the measure of responsibility for the failure on the part of the company to operate its system, but was intended to give the city a remedy for the repair and restoration of its streets.

The respondents contend, however, that the case of Ancrum v. Camden Water, Light and Ice Co., 82 S. C. 284, holds that the penalty is controlling and excludes other consequences. Their argument is based upon the following quotation from the opinion of Judge Woods:

"There is another strong reason for this conclusion. When parties themselves stipulate in the contract what shall be the consequences of a breach of the agreement, such stipulation, if reasonable, is controlling and excludes other consequences."

It is very apparent that this statement is by no means necessary to the decision of the case, but it commands our respect because of the learned and eminent Judge from whom it came. However, in the opinion of the Referee it does not militate against the conclusion reached. In the case at bar the parties did not stipulate what should be the consequences of a breach of the agreement. Their stipulation at most related only to a mere incident.

It is also very significant that there was a penalty clause in the ordinances involved in the case of Spartanburg v. S. C. Gas and Electric Co., 130 S. C., 125, and it was disregarded by the Court, although the penalty provision in that case was practically the same as that in the Anerum case. See also Bank v. Pruitt, 121 S. C. 484; Jolly v. Martin, 120 S. C., 317.

So far we have considered the main ordinances adopted by the City of Columbia under which the street railway system was installed and operated. These ordinances con- [fol. 226] tain no limitation as to time and no rate provisions. When the original horse car ordinance was passed the grantee Company had a corporate existence of thirty years, and when the first electric car ordinance was passed the grantee company had a corporate existence of fifty years. It seems probable that this circumstance was not taken into account by either party, although, of course, they are presumed to have known it. While the authorities are not entirely uniform, the better view seems to be that where a franchise is granted to a corporation without words of assignability, as in this case, the grant would be limited to the life of the grantee or to the period of its existence as fixed in the charter. St. Clair County Turnpike Co. v. People of Illinois, 96 U. S. 63, 24 L. Ed., 651. This is a matter of legal construction based upon the same reasoning under which a life estate is taken in real property where there are no words of inheritance and also upon the fact that the duration of a franchise is strictly construed against the grantee. However, the Referee is unable to conclude that the acceptance of a franchise by a corporation with a charter limit to its existence per se creates an absolute obligation to continue the exercise of the franchise during the whole period of its corporate life without regard to any other consideration. In other

words, the Referee is at a loss to comprehend how a greater obligation is imposed upon a mortal corporation than would be imposed upon an immortal one under like circumstances. It seems to him that this result would be an unjustifiable anomaly. It is, therefore, scarcely necessary to consider the fact that the corporate existence of Columbia Railway Company was extended in perpetuity in 1912, and that as late as 1921 the city passed an ordinance for the construction of a line or lines on other streets.

As has already been indicated, a number of the subsequent ordinances as well as some of those originally passed were mere police regulations, and some of the later enactments simply authorized the enlargement of the railway system. The franchise granted to the Suburban Transit Company related to a single street and by [fol. 227] its express terms made the other street railway ordinances applicable thereto. The ordinance further provided that the passenger fare should never exceed five cents (which, of course, could only apply to that particular line). This stipulation in regard to the rate could scarcely be held to change the general scope of the transaction, especially in the absence of some definite limitation as to time. There were further provisions to the effect that the company should indemnify the city against all liability for damages accruing to persons or property by reason of the use of the street, and that the company should maintain the street between their tracks and on either side of the same as directed by the street committee. There was also a clause stipulating that the company should file its acceptance of the ordinance within ten days and that such acceptance should be an agreement to pay to the city any sum of money for which it might become liable on account of any injury, and to maintain the street as required by the ordinance. There was no direct testimony that the ordinance was accepted as therein required, but since the road was built and operated it may now be presumed that it was accepted. Of course, a formal acceptance, where an ordinance provides for none, is unnecessary. City R. Co. v. Citizens' Street R. R. Co. 166 U. S. 557, 41 L. Ed., 1114. However, an ordinance may provide for an acceptance in such terms as will indicate the actual making of a contract

and will throw light upon the nature and extent of its obligations. City of Cleveland v. Cleveland City Ry. Co., 194 U. S., 517, 48 L. Ed., 1102. For instance, the acceptance clause under consideration specifically bound the company to the indemnity and street maintenance clauses. However, considering all the terms of this ordinance its effect is substantially the same as the other street railway ordinances of the city.

The petitioners earnestly insist, as perhaps their primary proposition, that the obligation on the part of the respondents to resume operation of the system is absolute [fol. 228] under the city ordinances; that they constitute a definite contract to continue the operation for at least the corporate life of the Columbia Railway Company as of 1891, without regard to losses or claimed losses. In support of this proposition they rely very strongly on the case of Columbia Ry., Power & Light Co. v. Columbus, 249 U. S., 399, 63 L. Ed. 669. In that case the railway company appears to have had two particular franchises under each of which it was given the right to operate on certain streets in the City of Columbus, Ohio, at a fixed fare for the fixed period of twenty-five years. Due to the World War and the consequent advance in labor costs the rates fixed by these franchises proved to be utterly inadequate. The company then brought this suit alleging that the rates of fare were inadequate and confiscatory and that their enforcement would deprive the company of its property without due process of law and prayed for an injunction restraining the city from compelling the company to operate the lines covered by these ordinances, the allegation being that these franchises had been surrendered by the company. In the written notice of the surrender of the franchises in question the company stated that in order to give good street railway service to the people of Columbus it would continue to operate the street railway lines, but not under the two franchises or either of them, upon all the streets of the city, until notified by it to withdraw from those streets not covered by the perpetual franchises which the company claimed. It will be observed that the gravamen of the complaint of the railway company was not that the operation of the lines would result in a loss if the rates were raised, but that the rates fixed by these franchises were

confiscatory. If the fare could have been raised the company was willing to go on. It will also be noted that this case did not involve the entire system of the railway company, for it still claimed the right to operate in those streets where it had an alleged perpetual franchise. The Supreme Court of the United States held that a contract having been definitely made for a specified time at a [fol. 229] specified rate the duty of the company to operate under the franchises in question was governed by the principle that if a party charge himself with an obligation to be performed he must abide by it unless performance is rendered impossible by the act of God, the law or the other party; that unforeseen difficulties will not excuse performance; and that where the parties have made no provision for a dispensation the terms of the contract must control. The Court says:

"In the present case the terms of the contract are not doubtful. The term for which the company was given the right to use the streets of the city was definitely stated, and the terms, including the rates of fare which the company might charge, were explicitly laid down. There is no occasion to interpret general terms in the light of the intention of the parties or the circumstances of the case."

The Court also adverted to the acceptance of the ordinances by the grantees and the fact that there was no allegation showing that taking the whole term together the contracts would be necessarily unprofitable.

It seems that this company also had a light and power department, but this circumstance is not mentioned in the opinion, and certainly was not involved in the decision of the case.

The Referee concludes after a most painstaking and careful consideration of this decision that it is not controlling in the case at bar. What ever else may be said, we do not have have here a contract to run for a definite period at a definite fixed charge. Hence, this decision is not authority for holding that ordinances granting a franchise to operate a street railway system without limit as to time and without specification as to rate can be construed as requiring a continued operation at all events.

If so, the acceptance of practically any public utility franchise would require perpetual or indefinite operation under all circumstances. Such a result does not appear to be sanctioned by the authorities or by the reasoning upon which they are based. It is true the Suburban Transit ordinance applying to one street contained a limitation as to fare, but it lacked the other important element, limitation as to time.

[fol. 230] The petitioners further urge that aside from any other consideration the suburban development contracts impose the absolute obligation upon the railway company to resume the operation not only of the extension lines but of the entire system. Hence, it is necessary to analyze and consider the facts relating to these various extensions. So far as the Columbia and Eau Claire line and the Hyatt Improvement Company line are concerned it is manifest that the conveyance thereof to the Columbia Railway Company imposed no absolute obligation to operate at a loss. It is true that some rights-of-way were donated for the Eau Claire line and that the Hyatt line was built in connection with the relocation of Columbia College. But there was no contract between the Eau Claire Company and those who aided in the establishment of its line which provided for perpetual operation. The contract made by Mr. Hyatt or his company relating to Columbia College also did not so provide. When the Columbia Railway Company took over these lines they became incorporated in its system and it was under an obligation to operate, but such duty was not greater than the duty owed under the city ordinances, unless required by the North Columbia Land Company contract, which included the Hyatt line, and will be hereinafter considered.

The situation is substantially the same with reference to Columbia Land and Investment Company's Shandon Branch line. This line was first taken over by Columbia Railway Company under a lease which required its continuous operation during the entire term, that is to say, ninety-nine years from August 15, 1902, but the lease itself granted the option to the railway company to purchase the line. This option was exercised and a deed duly executed to the railway company for valuable consideration containing no covenants whatever on the part of the grantee.

It seems clear to the Referee that the lease was superseded by the deed or merged therein. 35 C. J. 1041. It would perhaps be more technically accurate to say that the lease was terminated by the execution of the deed, but th- result [fol. 231] will be the same if it be considered a merger. It is true that merger does not always take place, the exception being that it will not occur where it is against the intention of the parties, but that intention certainly cannot be implied unless it would be against the interest of the party in whom the several estates or interests have united. McCreary v. Coggeshall, 74 S. C., 42. From any viewpoint it would be rather extraordinary to hold that the purchaser of property by an unqualified deed was bound by the terms of a previous lease thereof to himself. The lease here not only provided for a 99-year operation, but that the railway company was to pay a semi-annual rental during the whole term. If it had been the intention of the lease that the option granted to purchase the property would carry with it the obligation to operate during the full term of the lease, or if this had been the intention of the deed, the slightest care would have required it to be so stipulated. Hence, the Referee concludes that the acquisition of this line did not enlarge the charter and franchise obligations of the railway company, except that it thereby became included in its system. The fact that members of the public purchased and improved property upon the assumption that this line would continue and upon alleged statements by the President of the investment company surely do not affect the conclusions suggested.

The North Columbia Land Company contract required the operation of its line and the Hyatt Improvement Company line, and while the contract relates primarily to these extensions it was provided that they should be operated in connection with the lines of street railway in and near the City of Columbia, which implies the obligation to run the entire system. The contract fixes no time limit but uses the broad term "thenceforth." The respondents contend that the contract was not perpetual, relying in part upon the case of Childs v. City of Columbia, 87 S. C., 566, the agreement in that case being held determinable on reasonable notice. They also cite other cases to the effect that [fol. 232] even where language is used which might per-

haps indicate perpetuity the contract will be held sufficiently performed after the lapse of a reasonable time. Texas, etc., R. Co. v. Marshall, 136 U. S., 393, 34 L. Ed., 385. There is really no substantial divergence among the cases on principle. The contruction depends upon the nature of the contract and the surrounding circumstances. The case of M'Kell v. Chesapeake & O. Ry. Co., 175 Fed., 321, cited by petitioners, seems to state the true rule. In that case there was a contract between the owner of a tract of coal land and a railroad company whereby the company built a branch line to the mines; and the Court held that the contract was permanent so long as the stipulated production of coal was maintained; that the contract was the means of promoting the coal owner's enterprise and should endure so long as the objects contemplated by it remained unfulfilled. The inducement to the North Columbia Land Company for entering into the contract was to obtain street car service in order to promote the sale of its property, and since the evidence shows that the company still owns property in that neighborhood and is still engaged in selling or attempting to sell it, the original purpose of the agreement remains unfulfilled, and the Referee finds that the contract continues in force and effect.

May the Court issue a writ of mandamus to enforce this contract? Unless the obligation to run the street cars exists by virtue of the State charters and the ordinances of the city it would certainly seem very anomalous to require the operation of the entire system because of a private contract relating primarily to short extensions. It would appear *go* be a case of the lesser controlling the greater. The learned lawyer who as a member of the Railroad Commission was the author of the majority opinion upon which their final order was based, however, regarded this contract as perhaps a sufficient reason to require the resumption of the operation of the system. But it seems to the Referee that North Columbia Land Company has an ade-
[fol. 233] quate remedy in an ordinary action, and it appears to be a well settled principle that the writ of mandamus will not be granted where there is any other adequate remedy; hence, it is held with great uniformity that mandamus cannot be awarded for the enforcement of private contracts. Ex Parte Mackey, 15 S. C., 322, Com-

missioners ads. Lynch, 13 S. C. L., 170 State v. Appleby, 25 S. C., 100, State v. Whitesides, 30 S. C., 579, 38 C. J., 588. It is true that the writ has frequently been awarded at the instance of individuals for their special and peculiar benefit, but an examination of these cases will show that they are founded upon some public duty of the respondent. But for this public duty the writ could not be issued. This is the principle upon which the case of Poole v. Water Co., 81 S. C., 438, and others of like nature were decided. If I contract to furnish water or lights to my neightbor and am not under an obligation to the public to furnish such utilities my neighbor may indeed avail himself of the ordinary legal and equitable remedies against me for any breach of the contract on my part, but the Court would not give him the extraordinary remedy of mandamus. On the other hand, if I am exercising a public franchise for the operation of a public utility then my failure so to furnish my neighbors is entirely sufficient ground for mandamus. But its foundation is the public duty, although the immediate liability to the individual may be under a contract. In the case of State, etc., v. Spokane Street R. Co. (Washington), 41 L. R. A., 515, it was held that one who lives adjacent to a street railway and owns considerable property there which he has improved relying upon the facilities afforded by the line has a material individual interest which entitles him to be a relator in mandamus to enforce the operation of the line in a proper case, the Court saying: "It is shown, however, he has a material individual interest in enforcing the performance of a duty to the public."

The petitioners further argue that the contract with the North Columbia Land Company, (and this relates also [fol. 234] to the other development contracts), inured to the benefit of those who purchased lots from the company and improved them. It is well settled by our decisions that a contract may be made for the benefit of third persons, and that they may obtain relief thereunder; but the presumption is that parties contract for their own benefit and not for that of others not parties to the contract. A careful consideration of the North Columbia Land Company contract (and this applies to the other development contracts) leads inevitably to the conclusion that the contract was not made for the benefit of third persons, but was

plainly made for the benefit of the land company itself to enable it to sell its own property, this being its corporate purpose, and this purpose being so important that it expended its own money for the construction of the line. Mere incidental benefits which others may derive from a contract do not give a cause of action. Anerum v. Water Co., 82 S. C., 284.

The Shandon Annex Company contract remains to be considered. By the terms of this contract the railway company agreed to operate the line and to maintain not less than one car an hour. But there is a stipulation that upon the completion of the railway and compliance with certain other terms of the agreement there shall be delivered an absolute and unqualified transfer and conveyance of the railway and its appurtenances, including the right-of-way in perpetuity. The evidence shows that the conveyance was tendered to the railway company, but the same was refused by it upon the ground that conditions were attached to the transaction not provided for in the contract, which in substance seem to have been that the railway company should accept the terms of the ordinance adopted by the Town of Shandon, which gave Shandon Annex Company the right to build and operate the line in question so long as the Columbia Railway Company operated not less than four cars an hour on its original Shandon line, and also had [fol. 235] other provisions about the paving of the streets and installing electric lights at certain points. If the deed was executed and tendered in accordance with the contract, then the railway company should have accepted it, and this deed might show the extent of its rights and obligations. Shandon Annex Company is in bankruptcy and the Trustee is not before this Court. The testimony on this subject was not complete and the question cannot be definitely determined. So far as the ordinance of the Town of Shandon is concerned the fact that the railway company operated the line might not necessarily be held to bind it to the terms of the ordinance in view of the circumstances and in the face of its declared opposition thereto, unless indeed the terms of the ordinance were reasonable police regulations. The question, however, is not very important, because if we assume that the ordinance was binding on the railway company its legal effect is not materially

different from that of the Suburban Transit Company ordinance. Assuming further that the terms of the Shandon Annex Company contract as to operation are still in force and effect, although this cannot be definitely determined from the evidence before the Court, the principles above stated with reference to the North Columbia Land Company contract are applicable.

If the foregoing conclusions of the Referee are sound it would follow that mandamus does not lie on account of the development company contracts, and while the Columbia Railway Company was under an obligation to furnish street railway service to the City of Columbia and its suburbs by reason of its acceptance and action upon the franchise, such an obligation would be determinable under some circumstances, to wit, that the operation was at such a loss that its continuance would amount to an appropriation of the property of the company for a public use without any compensation or without just compensation, and thereby deprive the company of its property without due process of law in violation of the State and Federal Constitutions, bearing in mind that the holder of a franchise [fol. 236] cannot retain its benefits and escape its burdens, which will hereafter be fully discussed. The Referee has given most mature reflection to this phase of the case, and he is unable to find that there would be any reasonable prospect of the company's being able to continue without incurring loss. The evidence of loss is so overwhelming that it cannot be ignored. The company has not only received no compensation for the operation of its railway system over a period of seven years or more, but it has actually paid out for this service a greater amount than it has received from the public. The petitioners, while not waiving their position that the matter of loss is irrelevant, earnestly argue that the losses were enhanced by undermaintenance, inadequate service and the encouragement of competition, particularly during the latter period of the operation. The majority opinion of the Railroad Commission upon which its last order was based also holds that the company had not used proper business methods to stay in the field. It is true that the system was undermaintained for a considerable time, but in the light of the severe con-

tinuing losses can it be said that the expenditure of large sums for this purpose would have been good business judgment, and would not have resulted in a greater loss? The orders of the Railroad Commission show that adjustment of rates and suggested economies were given a fair trial and did not relieve the situation. As to the encouragement of competition, the testimony of Mr. Lumpkin, one of the witnesses for the petitioners, was to the effect that the street railway company received the greater share of such patronage as there was and that the bus company was forced out of business by this and other competition after a large investment had been made. Petitioners also called attention to the fact that the losses decreased considerably in 1926; but they were still so large as to be disastrous, and for the first two months of 1927 they proportionately greately increased. The testimony of the witnesses for the respondents who appear to have had experience in the busi-
[fol. 237] nss was to the effect that in their opinion it would be impossible to operate the street car system in Columbia successfully. Councilman Hoefer, the only witness testifying for the petitioners on this point, said:

"I say if the competition is removed from the street car system, I believe they can operate and I think possibly they would break even or make a little money. Maybe for a little while they will lose a little money."

He also very frankly gave it as his opinion that the company ought to be willing to operate this part of its business even at some loss on account of its other departments. If the magnitude of loss were not so great, and if it had not continued for so long a time, the hope of future successful operation might perhaps be entertained. But here we have a loss of appalling magnitude extending over a long period during a part of which the business was under one management, and during the latter part under another. The future may not always be predicted from the past, but the criterion of experience cannot be disregarded in the absence of some better one founded on definite facts and circumstances. In the South Carolina rate case of Augusta-Aiken Ry. v. Railroad Commission, 281 Fed., 977, the Circuit Court of Appeals for our Circuit held that a rate which for some years has allowed no return on capital investment,

and under which the road is operated at a loss of several thousand dollars a month, is so clearly confiscatory as to remove the question from the field of discussion.

The fact of loss, however, does not relieve the grantee of a franchise from the obligations it imposes, so long as he continues to hold it. Consequently, the authorities are very numerous to the effect tthat a railroad company may be required, for instance, to operate a branch line or to make a certain connection, and that a street railway company may be required to do certain paving pursuant to the reasonable regulations of a city, operate certain of its lines, and numerous other things, although they may incidentally result in a loss and even a loss on the entire operation. The true reason for these holdings is that the holder of a franchise cannot escape its obligations even if they result in [fol. 238] loss so long as he retains the franchise. Fort Smith Light & T. Co. v. Bourland, 267 U. S., 330, 69 L. Ed., 631; Milwaukee Co. v. State of Wisconsin, 252 U. S., 100, 64 L. Ed., 476; Chesapeake & O. R. Co. v. Public Service Com., 242 U. S., 603, 61 L. Ed., 520; Missouri P. R. Co. v. Kansas, 216 U. S. 262, 54 L. Ed., 472; Atlantic Coast Line Railroad v. N. C. Corporation Commission, 206 U. S., 1, 51 L. Ed., 933.

Typical of the reasoning contained in the cases cited we quote the following from the case of Missouri P. R. Co. v. Kansas, supra, in which the company was required to install a passenger service ofer a certain line:

"The fact that the performance of the duty commanded by the order which is here in question may, as we have conceded for the purpose of the argument, entail a pecuniary loss, is, of course, as declared in the Atlantic Coast Line Case, as a general rule, a circumstance to be considered in determining its reasonableness, as are the other criteria indicated in the opinion in that case. But where a duty which a corporation is obliged to render is a necessary consequence of the acceptance and continued enjoyment of its corporate rights, those rights not having been surrendered by the corporation, other considerations are, in the nature of things, paramount, since it cannot be said that an order compelling the performance of such a duty at a pecuniary loss is unreasonable. To conclude to the contrary would be but to declare that a corporate charter was purely

unilateral; that is, was binding in favor of the corporation as to all rights conferred upon it, and was devoid of obligations as to duties imposed, even although such duties were the absolute correlative of the rights conferred."

We also quote the following from the case of Railroad Commission v. Eastern Texas R. Co., supra:

"So long as the railroad company 'continues to exercise' the privileges conferred by its charter, the state has power to regulate its operations in the interest of the public, and to that end may require it to provide reasonably safe and adequate facilities for serving the public, even though compliance be attended by some pecuniary disadvantage."

* * * * * * *

"By way of distinguishing the cases in hand from some which are cited by the appellants, it is enough to observe that here the company has ceased to exercise the privilege, conferred by its charter, of maintaining and operating the road as a common carrier—and this because the available traffic has diminished to a point where further operation is economically impossible."

The authorities above referred to relating to the performance of obligations incidental to the franchise, are manifestly not applicable to this case so far as the street [fol. 239] railway system alone is concerned, because the respondents have given up the operation of the entire system and claim no benefit under that particular franchise. The petitioners, however, take the position that the case does come within the principle that you cannot avail yourself of the benefits of a franchise and escape any of its obligations even if onerous to the extent of large financial loss; in that, the Columbia Railway Company became the owner by the grant of the sovereign power of one combined franchise to furnish street railway service, electric light and power service and gas service; that the electricity and gas business are highly or at least reasonably profitable, and that if the company claims the right to exercise any of these alleged branches of the franchise it must continue them all. They rely in support of this contention upon the Spartanburg case (S. C. Gas & Electric Co. v. City

of Spartanburg, 130 S. C., 125). After a careful examination of the numerous authorities cited by counsel on each side and such independent investigation as the Referee has been able to make, he finds that the Spartanburg case is in some respects one of novel impression, but the soundness of the decision is not to be questioned on that score. There the City of Spartanburg by one ordinance granted three franchises, street railway, gas and electricity. The ordinance fixed the rate for each of these utilities and provided for a written acceptance, the same to be construed as an agreement by the grantee to comply with and be bound by the terms and conditions of the ordinance, and such acceptance was duly executed. The ordinance also provided that the rights granted should continue for the period of forty years. The case is, therefore, very similar in some of its aspects to the Columbus case, in that there was a formal acceptance of the contract for a definite time at fixed rates. The Court held that the company must continue to operate its street railway even at a loss because it could not avail itself of its gas and electricity privileges without assuming the burden of performing the entire contract, especially as to the electricity and the railway business. The true ratio of this decision is apparent when we [fol. 240] remember that all the franchises, or all the branches of the one franchise, if that statement be preferred, were not only granted at one and the same time to one and the same person, but that he accepted and agreed to exercise them all. The Court, therefore, construed the ordinance as one and indivisible upon the ground that the several franchises were interdependent. Indeed, the acceptance of the combined franchises may have been a very important part of the agreement. The city might have refused to give one unless the grantee would take all.

The petitioners seek to bring themselves within this case. But it is manifest at the outset that there is no ordinance or ordinances of the City of Columbia comparable to the Spartanburg ordinance. The Columbia ordinances relate solely to the street railway business. It is true that the Columbia Railway Company acquired franchises for gas and electricity, but these rest upon the charter authority conferred by the State of South Carolina. So the petitioners argue that the franchises were unified by the statutory charter

granted to the Columbia Railway Company in 1891 which authorized the consolidation of the Columbia Electric Street and Suburban Railway and Electric Power Company, incorporated by the act of 1890, and the Congaree Gas and Electric Company, incorporated by the act of 1887, and also authorized the consolidated company to buy out the old horse car company. The consolidating act further provided that the consolidated company should be vested with all the rights, franchises, powers and privileges conferred upon the old companies, subject to all their debts and liabilities.

Counsel for the respective parties have displayed a wealth of learning on the effect and consequences of corporate consolidation, but in the view of the Referee these authorities do not greatly illuminate the main point in issue. The act in question seems to have provided for a real consolidation as distinguised from amalgamation or merger, because the constituent companies were extinguished and a new corporate entity created. See authorities cited in the [fol. 241] note, 89 Am. State Rep., 604. But if the consolidating act be construed as a grant de novo of all the franchises covered thereby it remains necessary to refer to the old charters to discover the nature and extent of the rights granted. It will thus be seen that the several franchises are encumbered with diverse conditions. The street railway franchise had special conditions, vis., it required the consent of the city council, and was also conditional upon the commencement of the operation of the railway in the city within five years. The gas franchise applied only to the City of Columbia or its vicinity. The electricity franchise did not mention the City of Columbia but covered the several cities, towns and villages of the entire state. In addition to this there was nothing whatever in the consolidating act which required the exercise of any of the franchises, nor did it provide that all or none must be exercised. As a matter of fact, the gas business appears to have been done under another franchise previously granted by the state. If the contention of the petitioners be correct that the consolidating act so unified the franchise that a contract was thereby engendered which made them interdependent and conditional upon one another, it would logically follow that the Company had no right to engage

in any one of them without undertaking them all, which surely is not correct. The manifest purpose of the consolidating act was to give the new company permission ("power" and "authority" being the words used in the charters) to exercise the several franchises or any of them upon complying with their respective conditions, which shows their independence. This conclusion seems to be founded in reason, and is supported by the case of Illinois Trust & Savings Bank v. Doud, 105 Fed., 123, 52 L. R. A., 481, in which the opinion was delivered by Judge Sanborn. The Court says, in reference to a claim of forfeiture against a public service company:

"The ordinances relative to its electric lighting imposed no conditions upon its business of furnishing steam heat and power, or upon its business of operating the street railway. Now, conceding that the franchises of a public or quasi public corporation may be forfeited for misuse or renunciation, still the entire failure of this corporation to [fol. 242] exercise its power to furnish electric light would have furnished no ground for the forfeiture of its franchises to furnish steam heat and power and to operate its street railway. Another of the franchises granted to this corporation under its articles was the power to buy, hold, use, and sell the corporate stock of any competing corporations in the city of Ottumwa. None of the franchises to operate a street railway, to furnish electricity, or to furnish steam heat and power could have been forfeited because the corporation had not exercised its power to purchase the stock of rival corporations. No corporation is required to exercise all the powers granted to it by its organic law as a condition of the exercise of some of them unless that requirement is expressly made by some statute or ordinance under which it derives some of its powers or privileges, or the powers are inseparably connected with each other."

The City of Columbia manifestly did not regard the franchises as being in any way interdependent, for its ordinances relate solely to the street railway system and there is no suggestion therein contained that the other business of the company was in any sense a condition or consideration for the granting of the franchise.

We conclude, therefore, that the consolidating act does not have the effect of making the other departments of the business of respondents dependent upon the operation of the street railway. This finding is also supported by other authorities.

In the case of Mt. Carmel, etc., Co. v. Public Utilities Com., Ill., 21 A. L. R., 571, annotated, the Supreme Court of Illinois said:

"Where a public utility corporation is engaged in furnishing to the public, through various departments of its business, different kinds of service, it cannot be compelled to carry on a branch of its business which furnishes one kind of such service at a loss, even though at the same time its whole business may be conducted at a profit. Brooks-Scanlon & Co. v. Railroad Commission, 251 U. S. 396, 64 L. ed. 323; Northern P. R. Co. v. North Dakota, 236 *W*. S. 585, 59 L. ed. 735; Norfolk & W. R. Co. v. Conley, 236 U. S. 605, 59 L. ed. 745."

See also the case of Northern Ill., etc., Co. v. Ill. Commerce Com., Ill., 234 N. E., 132, to the same effect, this being a street railway case.

The United States Supreme Court decisions cited in the Mt. Carmel case are not directly in point, but indicate the trend of judicial thought. The first of these cases involved a lumber company and it was held that the company could not be required to operate its railroad at a loss because its [fol. 243] sawmill business was profitable. The other two cases were rate decisions holding that a railroad company is entitled to a fair return on each department of its business.

The Public Utility Commission decisions cited in the note to the Mt. Carmel case show that it is the recognized rule throughout the country that when a utility operates distinctive classes of service each branch or class of its business must be considered separately for purposes of rate making or discontinuance of service. It was said in Re Trinidad Electric Trans. Ry. & Gas Co., P. U. R. 1922C, 299:

"If, in Trinidad, three different utilities entirely distinct from each other were operating a street railway, a gas plant and an electrical utility, no one would even suggest that the street railway utility should contribute from

its earnings anything toward the operation of the gas or electrical utility, nor in such case would one suggest the contribution by the electrical or gas utility of any amount to the street railway utility."

Hence it was held that the users of each utility must support it whether it be owned by one entity or by three distinct entities.

Aside from authority, it is manifestly just and reasonable that the patrons of one public utility should not be required to contribute to the maintenance or make up the losses of another public utility which they do not use. Any other holding would be deterimental to the public interests.

The case has thus far been discussed as if one company owned all the franchises and property and no conveyance had been made; and the Referee is of the opinion that whatever may be the judgment of the Court upon the merits the cause should be so treated. The merger or enabling act does not require extended consideration. It authorizes a merger or a sale; and the sale might be in whole or in part, but the act, of course, contemplated a real sale, and not a mere formal one. Under the admitted facts and circumstances of the case the transaction between Columbia Railway, Gas & Electric Company and Broad River Power Company was, so far as this proceeding is concerned, tantamount to a merger of the former into the latter, although nominally the railway company retained the street railway [fol. 244] property and its corporate existence.

It is true that mere ownership of the capital stock of one corporation by another does not create an identity of corporate interest between the two companies, or render the holding company the owner of the property of the other, or create the relation of principal and agent, or representative, or alter ego between the two; but it is equally true that when the facts show not only stock ownership, common officers and the like, but that the subsidiary company was a mere agency or department of the holding company, or that it was an instrumentality to subserve some special purpose of the holding company, particularly where the public interests are involved, the Court will deal with the substance of the transaction as if separate corporate entities did not exist. United States v. Lehigh Valley R. Co., 220

U. S., 257, 55 L. Ed., 458; United States v. Delaware, L. & W. R. Co., 238 U. S., 516, 59 L. Ed., 1438; Chicago, M. & St. P. R. Co. v. Minneapolis C. & C. Association, 247 U. S., 490, 62 L. Ed., 1229.

The foregoing may be deemed a rather broad statement of the rule, upon the ground that it is generally applied in cases involving actual fraud or criminal purpose, but it is believed that the rule as announced is in harmony with reason and authority. See Hamilton Ridge Lumber Sales Corporation v. Wilson, 25 F. (2d) 592.

The case at bar seems clearly to come within the purview of this principle. Here we have not only stock ownership and common officers, but the railway company to all intents and purposes was a mere department of the business of Broad River Power Company. Indeed, according to the respondents themselves the purpose of the transaction whereby the street railway property was left in the old company was to facilitate the financial arrangements of the new company. Hence, so far as this proceeding is concerned, the corporate respondents should be treated as united in interest; but this conclusion does not in anywise affect their de-
[fol. 245] fenses on the merits.

If the views of the Referee as hereinbefore expressed are correct, there would be no occasion to consider the questions of pleading and practice raised by the respondents; but since the functions of the Referee are merely to recommend he takes it to be his duty also to consider this phase of the case. The primary position of the respondents on this point is that the Attorney-General has only such powers as are conferred upon him by statute, and that there is no statutory authority for the bringing of this proceeding. The Constitution of 1895 (Art. V, Section 28) says: "There shall be an Attorney-General for the State, who shall perform such duties as may be prescribed by law." The language of the Constitution of 1868 (Art. IV, Section 28) is identical. The constitutional provisions indicate that the duties of the Attorney-General in this State must be prescribed by statutory enactment, although the office of Attorney-General is very ancient, and in the absence of constitutional restrictions he would have many common law powers. State v. Milwaukee, etc., Co. (Wis.), 18 L. R. A.,

N. S., 672; Walker, Attorney-General, v. Power Co., (Ga.), 92 S. E., 57; Railroad Tax Cases, 136 Fed., 233

In the case of State v. Corbin, 16 S. C., 533, the Court held that a suit was properly brought by the Attorney-General to recover moneys of the state received as attorneys' fees. The primary reason for this holding was that the suit grew out of an action brought by a former Attorney-General against a corporation to require it to pay for phosphatic rocks taken from lands belonging to the State, such an action clearly being within the statute which is now Section 798, Volume 3, Code of 1922. The Court further adverts to the fact that General Statutes 110, Section 35, required the Attorney-General to "defend the rights of the State in all cases where its rights are involved." A careful examination of the present statutory law of the State shows that the last quoted provision is not now included therein. Section 811, Volume 3, Code of 1922, is slightly similar but [fol. 246] plainly not applicable to the case at bar.

There are various provisions in the Code of Civil Procedure as to actions by the Attorney-General in the nature of scire facias and quo warranto. Sections 775 to 794, inclusive, Volume 1, Code of 1922. But these sections clearly do not apply to the present proceeding. Section 798, Volume 3, Code of 1922, above mentioned is as follows:

"He may, when, in his judgment, the interest of the State requires it, file and prosecute information or other process against persons who intrude upon the lands, rights, or property of the State, or commit or erect any nuisance thereon."

Section 191, Volume 3, Code of 1922, is practically identical.

This section (798) was construed in the case of State v. Water Power Company, 82 S. C., 181, as authorizing the Attorney-General to bring an action to enjoin the defendants from continuing the construction of a bridge across the Columbia Canal. The opinion in this case was delivered by Judge Woods, in which he cites the case of Coosaw Mining Co. v. South Carolina, 144 U. S., 550, 36 L. Ed., 543, where an injunction was granted against the taking of phosphate rock from a navigable stream in the State, and it was decided by the Supreme Court of the United States that it

was proper for the Attorney-General as representing the public to institute the action; and he was clearly authorized to do so under the section above quoted.

The petitioners conceive that the rights of the public at large or the State are involved herein, particularly because the authority of the respondents to operate a street railway is derived from charters granted by the General Assembly. In addition they call attention to the fact that the streets of the City of Columbia are owned in fee by the State. But giving the widest sort of latitude to Section 798, Volume 3, above quoted, it would scarcely seem to cover such a case, nor does the case come within the reasoning of the authorities last above cited. This section uses the [fol. 247] words "intrude upon the lands, rights, or property of the state." Can it be said that the failure to perform the duties alleged to be required by a franchise granted by the state is an intrusion upon the rights of the State? The word "intrude" is defined in 33 C. J., 804, as follows: "To thrust or force (something) in or upon; especially to force (one's self) in without leave or welcome." See also definition of "intruder," 33 C. J., 804.

The Referee is, therefore, of opinion that the proceeding could not be maintained by the Attorney-General; but certainly the City of Columbia and some of the other relators have full power and authority to maintain the proceeding and will be entitled to the remedy if the Court should find that they have made out their case upon the merits.

It is true that the respondents earnestly urge that if the main petition brought by the Attorney-General should fall all the intervening petitions must likewise be dismissed. But the intervenors are properly before the Court as has already been definitely held. Hence, even if the petitions of the intervenors be treated as independnt proceedings the Court would have the right to hear and determine them altogether; and in the exercise of a wise discretion this is a proper method of trial for the convenience of all parties concerned.

The final conclusion as already clearly indicated are that while the respondents by their acceptance and action upon the franchise granted for the operation of a street railway in the city of Columbia and its environs assumed an obligation to exercise such franchise and to perform the service

thereby required, this obligation was not an absolute one which required the continuance of the operation without regard to loss; that no contract so to continue the operation can be elicited from the charters granted by the State and the ordinances of the city; that in the light of the severe losses which have been sustained over a long period of years [fol. 248] the Court could not say that there is a reasonable prospect that a resumption of the operation would not result in a further loss; that while the respondents acquired the franchises for gas and electricity and the business done thereunder has been successful and profitable, the exercise of these franchises is not conditional upon the exercise of the street railway franchise; and that upon these findings the writ of mandamus would not be authorized. The Referee also concludes that mandamus will not lie on account of the contract with North Columbia Land Company upon the ground that this extraordinary remedy will not be granted in the case of a private contract, the rule being that mandamus is available only where there is no other adequate remedy. The same reasoning also applies to the other development contracts, if any of them be construed to require continued operation at all events.

It was said by the Court in the recent case of Huffman v. City of Columbia, filed July 24, 1928, "It is essential and necessary for the welfare of the City of Columbia that it have regulated public transportation operated upon regular routes and schedules." This statement is just and true and manifestly requires the cooperation of every citizen, person and corporation interested in the City of Columbia, including the respondents. Every citizen of the State must feel toward the City of Columbia not simply that it is "no mean city," but a city wherein the stately Capitol of our commonwealth stands; a city not only the geographical and political center of the state, but occupying a vantage ground of leadership in every worthy commercial and cultural achievement.

Having reached the conclusion, in the performance of the duty imposed upon him by the Court, that under the facts and circumstances of the cause to compel the respondents to restore the street railway service would violate the fundamental law of the land as declared in both the State

and Federal Constitutions, the Referee recommends to the Court that all the petitions be dismissed.

Respectfully submitted.

(Signed) L. D. Lide, Special Referee.

Marion, S. C., August 16, 1928.

[fol. 249] In Supreme Court of South Carolina

[Title omitted]

Exceptions to the Report of the Special Referee

To Hon. L. D. Lide, Special Rerefee; Messrs. Elliott & McLain and J. B. S. Lyles, attorneys for the respondents:

You will please take notice that the petitioners herein except to and appeal from the report of the Special Referee herein dated on August 16, 1928, and thereafter filed, upon the ground that he erred in his conclusions and findings therein as follows:

1. In failing to find or to follow the finding of the Railroad Commission that the electric street railway system could be made to yield a fair return, and without even considering the testimony before the Railroad Commission in reversing the said Commission's finding of fact, and holding that the system could not be operated except at a loss; and particularly in this connection in impliedly holding:

(a) That the companies had given the Railroad Commission's plans for increasing the revenue of the system a fair trial, and

(b) That the companies had kept the bulk of the patronage after the busses entered the field in 1926, and in failing to find

(c) That the companies during the last few years of operation had by unwise handling of the strike of 1922 and by under-maintenance, and by encouragement of competition from the jitneys and busses undertaken to destroy the [fol. 250] electric street railway service, and

(d) That all competition having been removed there are good prospects for future successful operation of the system.

2. In failing to find that the Act of 1892 chartering the Columbia Electric Street Railway, Light and Power Company conferred a consolidated franchise upon said Company for the combined operation of electric street railway, light and power (and gas) services for a period of fifty years, and that under such charter franchise the electric street railway service was inseparably linked with the electric light and power privileges contained therein, and in further concluding that the grantee of the said franchise could abandon one portion of the grant and retain the other portions thereof.

3. In failing to find that the City Ordinances granting the right to operate the electric street railway service constituted a binding contract requiring daily operation thereof under the direction of City Council for the fifty year charter life of the company, and in concluding as a matter of law that while a contractual relationship was thereby created between the said Columbia Electric Street Railway, Light and Power Company and the City of Columbia, such contract did not impose on the said company the absolute obligation to operate its said system; and particularly in this connection in holding:

(a) That the said ordinance while granting the right to operate for the period of fifty years did not likewise impose a corresponding obligation to operate for said period, and

(b) In holding that while the grant to the Suburban Transit Company contained in the City Ordinances of 1907 fixed a rate and was to be in all respects otherwise similar to the grant to the Columbia Electric Street Railway, Light and Power Company, such ordinances did not create any binding contract to operate for any particular period of time.

4. In failing to find that the operation contracts with the development companies were valid, subsisting contracts enuring to the benefit of the public and enforceable in this

proceeding by mandatory order specifically directing the operation of the system or enjoining the breach of said contracts, and in holding that such contracts even if valid and subsisting did not enure to the benefit of the public and were not enforceable in this proceeding; and particularly in this connection in finding and holding:

(a) That the 99 year operation contract with the Columbia Land and Investment Company was discharged by the Company's purchase of the Shandon line, and

[fol. 251] (b) That the Shandon Annex Company—Dr. W. B. Burney contract was not completely proven, and

(c) That the North Columbia Land Company contract while valid and subsisting was not made for the benefit of the public and was not enforceable in this proceeding, and

(d) In holding that the grants to the Columbia and Eau Claire Electric Street Railway Company whose property and franchises were taken over by the respondent companies did not create a binding continuing duty to operate, and

(e) That the purchase of the Suburban Transit Company line did not impose upon the companies the continuing duty to operate and provide electric street railway transportation under the Suburban Homes Company—Suburban Transit Company contracts.

5. Because the said Special Referee erred in finding and concluding that the Attorney General was not the proper party to institute this proceeding, whereas the said Referee should have held that the Attorney General was vested not only with all the powers expressly conferred by statute, but with all the common law powers of an attorney general, including particlarly the power to bring proceedings to require public service corporations to perform their franchise and public obligations.

6. In failing to recommend that the petition and order of the Railroad Commission should be sustained, and in recommending that the Commission's findings and order and petition based thereon should be reversed and dismissed, and particularly in so recommending without con-

sidering or reviewing the evidence taken before the said Commission.

7. In failing to find that the petitions herein should be sustained, and the respondent companies be required to maintain and restore adequate street car service, and in finding, holding and concluding that all the said petitions should be dismissed.

John M. Daniel, Attorney General. Cordie Page, Asst. Attorney General. Melton & Belser, Irvine F. Belser, H. N. Edmunds, C. T. Graydon, W. S. Nelson, E. W. Mullins, Attorneys for Petitioners.

[fol. 252] In Supreme Court of South Carolina

[Title omitted]

Notice of Additional Grounds to Sustain Report of Special Referee—Filed Aug. 27, 1928

To Hon. L. D. Lide, Special Referee, and Hon. John M. Daniel, Attorney General; Hon. Cordie Page, Assistant Attorney General; Messrs. Melton & Belser, H. N. Edmunds, Esq., Messrs. Nelson & Mullins, C. T. Graydon, Esq., Colin S. Monteith, Esq., attorneys for petitioners:

You will please take notice that upon the hearing of the report of Hon. L. D. Lide, Special Referee, the respondents, Broad River Power Company, Columbia Railway, Gas and Electric Company and F. D. Campbell, will rely upon the following errors committed in said report as additional grounds why the final conclusions of the Special Referee should be confirmed and sustained and all the petitions in this action or proceeding be dismissed as recommended by him, to-wit:

[fol. 253] 1. That the Special Referee erred in holding as follows:

"The North Columbia Land Company contract required the operation of its line and the Hyatt Improvement Company line, and while the contract relates primarily to these

extensions, it was provided that they should be operated in connection with the lines of street railway in and near the City of Columbia, which implies the obligation to run the entire system;"

Whereas he should have held that such contract related to and required the operation of street cars only over the lines or extensions of the Hyatt Improvement Company and North Columbia Land Company and did not imply any obligation to run the entire street railway system of Columbia Railway, Gas and Electric Company.

2. That the Special Referree erred in finding as follows:

"The inducement to the North Columbia Land Company for entering into the contract was to obtain street car service in order to promote the sale of its property, and since the evidence shows that the company still owns property in that neighborhood and is still engaged in selling or attempting to sell it, the original purpose of the agreement remains unfulfilled, and the Referee finds that the contract continues in force and effect."

Whereas he should have held that performance by Columbia Railway, Gas and Electric Company (including performance by said Company under its former name of Columbia Electric Street Railway, Light and Power Company) under said contract since the date thereof, to-wit, August 24, 1906, for approximately twenty years, was a complete performance and discharge of its obligations and duties under said contract, which had thereby terminated, so that said contract was no longer in force and effect or binding upon said Columbia Railway, Gas and Electric Company.

[fol. 254] 3. That the Special Referee erred in finding as a fact that, in so far as the corporate management is concerned, the railway business of Columbia Railway, Gas and Electric Company was carried on after the conveyance of June 15, 1925, to Broad River Power Company almost exactly as it had been prior thereto; and that after such conveyance, to all intents and purposes, the street railway business was carried on as a department of the general business conducted by Broad River Power Company;

When the evidence established that after the conveyance the separate and distinct corporate existence of Columbia Railway, Gas and Electric Company was in every way maintained and that it, as a separate and distinct corporation, conducted its street railway business entirely as a separate and distinct business, with a separate superintendent, operating force and operating office, and keeping separate books and records, making separate reports as required by law, and that said street railway business was in no wise conducted as a department of the general business of Broad River Power Company.

4. That the Special Referee erred in holding as a matter of law that the cause should be treated as if one company owned all the franchises and property and no conveyance had been made, that there was merely a formal sale and not a real sale, as required by the merger or enabling act, and that the transaction between Columbia Railway, Gas and Electric Company and Broad River Power Company, so far as this proceeding is concerned, was tantamount to a merger of the former into the latter, and that the subsidiary company was a mere agency or department of the holding company or a mere instrumentality to subserve some special purpose of the holding company and that, in so far as this proceeding is concerned, the corporate respondents should be treated as united in interests;

Whereas he should have held that there was a real sale [fol. 255] from Columbia Railway, Gas and Electric Company to Broad River Power Company, as authorized by the merger or enabling act, that the two corporations were and still are separate and distinct corporations, that the transaction between the two corporations was not tantamount to a merger, that Columbia Railway, Gas and Electric Company was not an agency or department of Broad River Power Company, was not an instrumentality to subserve its purpose, and that the corporate respondents should not, so far as this proceeding is concerned, be treated as united in interests.

5. That the Special Referee, having concluded that the Attorney General had no legal authority to maintain this proceeding, erred in holding that "the City of Columbia and some of the other relators have full power and author-

ity to maintain the proceeding and will be entitled to the remedy, if the Court should find that they have made out their case upon the merits," and in further concluding:

"It is true that the respondents earnestly urge that if the main petition brought by the Attorney General should fall all the intervening petitions must likewise be dismissed. But the intervenors are properly before the Court as has already been definitely held. Hence, even if the petitions of the intervenors be treated as independent proceedings the Court would have the right to hear and determine them all together; and in the exercise of a wise discretion this is a proper method of trial for the convenience of all parties concerned;"

Whereas he should have held that, under the orders of the Supreme Court, the intervenors were not permitted to file independent petitions and seek relief based on independent causes of action, but merely to join and intervene in the original or main petition filed by the Attorney General and [fol. 256] become parties thereto, and that the Supreme Court had held merely that the intervenors were properly before the Court in this respect and capacity, so that when the main petition falls because of the lack of authority of the Attorney General to maintain the same, all the intervening petitions must likewise be dismissed.

6. That the Special Referee erred in overruling the objection of Columbia Railway, Gas and Electric Company to the jurisdiction of the Court over its person, upon the ground that this action or proceeding had been dismissed as to it by the order of the Supreme Court dated February 17, 1928, and that the Court had not acquired jurisdiction of its person, bringing it back into this action or proceeding by due process of law under both State and Federal Constitutions, and further erred in refusing the motion of said Company to be dismissed from further attendance upon the reference on the same ground;

Whereas he should have sustained such objection and granted such motion upon the grounds and for the reasons stated.

7. That the Special Referee erred in concluding as a matter of fact that the merger or enabling act was not a part of

the canal settlement, when the evidence conclusively established that such act was a part of such settlement and a substantial portion of the consideration moving to respondent companies thereunder and so relied upon by them.

W. C. McLain, J. B. S. Lyles, Attorneys for Respondents, Broad River Power Company, Columbia Railway, Gas and Electric Company, and F. D. Campbell.

Columbia, S. C., August 27, 1928.

[fol. 257] Service of the within acknowledged and copy received this 27th day of August, 1928, at 1:25 p. m. John M. Daniel, Atty. Genl. Cordie Page, Asst. Atty. Genl. Melton & Belser, Nelson & Mullins, all by Wm. S. Nelson, also for other Attorneys for Petitioner.

A true copy: J. B. Westbrook, Clerk Supreme Court of South Carolina.

[File endorsement omitted.]

[fol. 258] In Supreme Court of South Carolina

Case No. 360

Ex Parte: State of South Carolina ex Relatione John M. Daniel, Attorney General, Petitioner,

v.

Broad River Power Company et al., Respodents

In the Original Jurisdiction

Petition Granted

John M. Daniel, Att'y General, Cordie Page, Ass't Att'y General, Irvine F. Belser, H. N. Edmunds, C. T. Graydon, W. S. Nelson, and E. W. Mullins, all of Columbia, S. C., for petitioner.

Elliott & McLain and J. B. S. Lyles, all of Columbia, S. C., for respondents.

OPINION—Filed July 9, 1929

CARTER, J.:

We desire to state at the outset, that the Court, in the preparation of its opinion in this case, has followed, in the main, the well-prepared argument of counsel for petitioners.

This proceeding, commenced July 19th, 1927, is in the original jurisdiction of this Court for a writ of mandamus requiring and compelling the respondents to resume and continue the operation of the electric street railway system in the City of Columbia and other places near said city, the operation having been discontinued March 11, 1927. The alleged facts upon which the proceeding is based are set forth in the petition of the said John M. Daniel, Attorney General, which petition will be included in the report of the case. At the time of filing the petition an order to show cause was issued. Later by intervening petitions and orders issued thereon, a number of other parties were permitted to come into the cause, namely, the South Carolina Railroad Commission, the North Columbia Land Company, City of Columbia, W. B. Burney, Columbia College, Chicora College, School Board of the City of Columbia, Town of Eau Claire and the Town of Arden. To the several petitions the respondents filed demurrers, returns and answers. The petitioners moved to strike out the demurrers and returns, and in addition filed reply. Let it be stated in this connection that the rights of the intervening petitioners are properly determinable in this proceeding.

After hearing argument on the pleadings this Court issued an order referring the cause to Honorable L. D. Lide, as Special Referee, to pass upon all issues of law and fact, directing him to take the testimony and report his conclusions. While we are unable to agree to the conclusion reached by the Special Referee in holding that the petitions should be dismissed, and as to certain views expressed, we fully recognize and appreciate the splendid service he has rendered the Court and the full, able and [fol. 259] painstaking report made by him in the case, and we are in accord with his view as to some phases of the case, to which we shall hereinafter call attention.

On account of certain action in the United States Court on the part of one of the respondents, Columbia Railway, Gas and Electric Company, the details of which action are

fully stated in the report of the Special Referee, the procedure in this Court was stayed for a time, as to this respondent, but on April 2, 1928, by order of the Honorable Ernest F. Cochran, Judge of the United States District Court, the stay order in that Court was dissolved and the action in this Court proceeded against all of the respondents.

The Referee having overruled the petitioners' motions to strike out several returns and answers of the respondents, and having also overruled the demurrers interposed by the respondents, he proceeded to take the testimony offered by the parties to the cause. From the Referee's report, recommending that all of the petitions be dismissed, the petitioners have appealed. The respondents ask that the "final conclusions" of the Referee be sustained on the grounds stated by him and on other additional grounds, to which we shall hereinafter call attention.

As stated by the respondents, the principal defense of the respondents is that such railway cannot be operated except at a loss and that to grant the relief prayed for would result in the taking of the property of the respondents without due process of law in violation of the State and Federal Constitutions. It is, also, contended by respondents that if any liability exists it is the liability of Columbia Railway, Gas and Electric Company, and in no event is there any liability on the part of Broad River Power Company and F. D. Campbell, it being contended by respondents that the Broad River Power Company is a separate and distinct corporation from that of the Columbia Railway, Gas and Electric Company and that there is no connection between the two companies as to the matters involved in this cause; and, further, contends in this connection, "that the passage of the Act of 1925, authorizing the sale by Columbia Railway, Gas and Electric Company of its gas and electric properties to Broad River Power Company was part of the settlement of the canal controversy between the State and the Railway Company, and that the State could not attack the same." The Referee ruled adversely to this contention of respondents, and held that "the railway company was a mere department or instrumentality of the power company and that for the purposes of this case the two companies must be treated as one." We fully agree with the Referee as to this holding,

and the alleged error imputed to the Referee by the respondents in this holding does not furnish an additional ground for sustaining the "final conclusions" of the Referee, namely, that the petitions should be dismissed.

On this question, under "Statement of Facts," the Referee has the following to say, which is pertinent to the questions before the Court (it will be noted that when the Referee uses the term Railway Company or Columbia Railway Company he has reference to Columbia Railway, Gas and Electric Company):

"Sometime during the year 1924 W. S. Barstow and his associates, well known in this sphere of enterprise, became interested in the public utility business of the City of Columbia, and during this year acquired all or substantially all of the capital stock of the Columbia Railway Company. The testimony is to the effect that the prospects appealed to them because there was an acute shortage of power in [fol. 260] this locality, but unusual sources for its production in connection with the Columbia Canal and otherwise. At that time the Canal Commission appointed by the General Assembly was functioning for the purpose of settling the controversy between the State and the Columbia Railway Company relating to this canal, a much vexed problem. The Barstow interests organized a corporation under the laws of this State under the name of Broad River Power Company for the purpose of acquiring the stock of Columbia Railway Company with the intention of enlarging the business by establishing new and improved power developments and otherwise. The charter was granted by the Secretary of State under the general law on July 19, 1924, and was amended on November 14, 1924, so as to increase the authorized capital stock to $20,000,000.00. The actual stock finally issued, both common and preferred, was $8,138,900.00. Bonds were eventually floated to the extent of about thirteen million dollars. The general nature of the business proposed to be done by this corporation is set out in the charter at great length, including, among many other things, the building, constructing, acquiring by purchase, lease, consolidation, merger or otherwise, and operation of street railways, etc.

"The representatives of the Barstow interests entered into negotiations with the Canal Commission for the settle-

ment of the canal controversy, and after numerous conferences a settlement was agreed upon. On July 17, 1924, The General Finance Corporation, one of the Barstow companies, addressed a proposal to the Commission for the settlement of the canal controversy, submitting therewith a draft of two bills to be enacted by the Legislature, one a bill to settle the canal controversy, and the other a bill authorizing Columbia Railway, Gas and Electric Company and six other corporations subsidiary to it, including Columbia Gas Light Company, to merge or consolidate with, or to sell, transfer and convey to any one or more of them or to the Broad River Power Company all or any part of their respective properties, assets, franchises, charter or other rights, etc. The latter bill, which was subsequently enacted, is frequnetly called by the petitioners the merger act and by the respondents the enabling act. To avoid confusion it will hereafter be called the *merger or enabling act*.

"The business terms of the bill settling the canal controversy were finally adjusted and agreed upon, and the Commission recommended to the General Assembly a settlement of the rights of the State in and to the Columbia Canal in accordance therewith. The final draft of the settlement bill as submitted by the Barstow interest contained a recital that the General Assembly had passed the merger or enabling act, but at the instance of the Commission this recital was stricken out. After the form of the settlement bill had been finally agreed upon the members of the Commission signed letters addressed to Columbia Railway, Gas & Electric Company in which they stated that they approved both of the bills 'in the forms submitted to us and as amended by us this day, and thereafter agreed to by you.' They further stated in these letters that since the bills were now satisfactory they would recommend their passage and approval. The act settling the canal controversy was duly passed by the General Assembly and was approved March 24, 1925, Acts of 1925, page 852. The merger or enabling act was duly passed by the General Assembly and approved March 19, 1925, Acts of 1925, page 842.

"Mr. W. D. Barnett, who was a member of the Canal Commission and its Secretary, testified in regard to these negotiations. He says that no formal minutes were kept of the meetings of the Commission, but that his recollection

[fol. 261] was that the purchasers of Columbia Railway, Gas and Electric Company wanted the merger or enabling act for financial reasons, and that while the members of the Canal Commission took the view that they had no authority with reference to this act they were willing to assist the Barstow Company in getting their financial matters straight as a matter of accommodation. 'Someone asked if the purpose was not to eventually stop the street cars. They stated the object was to enable them to finance the operations here and not to stop the street cars—that is my recollection of it.' He testified further that some member of the Canal Commission said, 'We have nothing to do with that phase of it, that wasn't the duties of the Canal Commission.' There is no reference made in the act settling the canal controversy or in the contract therein set out to the merger or enabling act.

"The testimony in behalf of the respondents tends to show that it was very desirable to have the street railway property separated from the rest of the business in order to do the financing necessary for the contemplated developments. It was said that traction securities are regarded very unfavorably by the public, and public utilities with a losing traction department are also handicapped, and that hence it would have been very expensive to have done this financing without the separation. Assuming all this to be correct the Referee concluded as a matter of fact that the merger or enabling act was not a part of the canal settlement. Waiving the question as to whether the Commission as a matter of law had anything to do with the terms of the merger or enabling act, it is clear from all the facts and circumstances that their understanding was as stated by Mr. Barnett. If they recommend the passage of this act they acted individually and independently of their official duties in reference to the settlement of the canal controversy, and it seems to the Referee that they made this plain when they struck out the reference to the merger or enabling act in the settlement act. This conclusion is far from imputing fraud to the respondents and is not so intended. The Referee infers from the situation that if the Canal Commission had considered their recommendation of the merger or enabling act as a part of their official duties they would have ascertained more fully its possible effect.

"Before and after the settlement of the canal controversy and the adoption of the acts just referred to several bond issues were negotiated by Broad River Power Company. The circulars relating to these bond issues, or some of them, were introduced in evidence, and they included statements made in the name of Mr. W. S. Barstow, President. There were also introduced in evidence statements relating to these bond issues taken from the Commercial and Financial Chronicle of New York City, a bond journal. Mr. J. P. Campbell, who was Treasurer of both Broad River Power Company and the Columbia Railway Company, testified that the statements in the name of Mr. Barstow were prepared by the witness, and that while the references in the bond journal were news items rather than advertisements the information therein contained was presumably procured from his office directly or indirectly in a lawful manner. Hence, notwithstanding the objections of respondents the statements contained in the bond journal are considered in evidence as well as those in the circulars. It will not be necessary to recite them all, but in one issue of the bond *h*ournal it was stated that Columbia Railway, Gas & Electric Company and its subsidiary, The Parr Shoals Power Company, had been in successful operation over a long period of years. Also, in one of the issues (January 3, 1925) there was a statement giving the con- [fol. 262] solidated earnings of the several companies indicating a very profitable operation, but showing upon an analysis thereof an operating loss on the railway department. It was stated in the circular dated November 10, 1924, that Broad River Power Company was organized in July, 1924, for the purpose of acquiring the entire outstanding common and preferred stock of the Columbia Railway, Gas & Electric Company, which owned or controlled all the outstanding common stock of The Parr Shoals Power Company and the Columbia Gas Light Company; that Columbia Railway, Gas & Electric Company had been in active operation in Columbia since 1891, and that it was intended that the Broad River Power Company would effectuate the transfer to itself of all the physical properties, franchises and other assets of Columbia Railway, Gas & Electric Company and its two subsidiaries above mentioned '(except that the street railway properties may be held in a separate ownership)' after expected authoriza-

tion by the Legislature of South Carolina at its next session in January, 1925.

"Purporting to proceed under the authority of the merger or enabling act there was conveyed to Columbia Railway, Gas Electric Company all the property of its subsidiaries by deed or deeds dated June 15, 1925, and on the same day Columbia Railway, Gas & Electric Company, also purporting to act under the authority of the merger or enabling act, executed a deed to Broad River Power Company wherein and whereby it conveyed all the property theretofore owned by it, including that which it had acquired from its subsidiaries on that day, excepting only its franchise to operate and maintain its street railway within and without the City of Columbia and other municipal corporations in Richland County; all easements, rights-of-way, rights and privileges necessary for operation of the street railway; all street cars, tracks, ties, overhead conductors, brackets, spans, tools, repair equipment, material and supplies, used or useful exclusively for street railway purposes; and, a certain strip of land thirty feet in width. The evidence shows that the property of the subsidiary corporations was conveyed to the railway company for the reason that its outstanding mortgage carried as a part of the security the stocks of the subsidiaries, and it was, therefore, necessary to put the title to the property in the railway company so as to bring it under the lien of the mortgage, in lieu of the stocks. The deed to Broad River Power Company expressly includes 'all poles, including those used exclusively for street railway.' The evidence further shows that the poles carrying the trolley wires for the operation of the street cars also carry the wires for the transmission of electric current, or that this is true to a large extent. There was also included in the conveyance to Broad River Power Company the substation and the car barn which, of course, had been used at least principally in connection with the street railway business.

"Broad River Power Company upon its organization issued its own stock to the extent of $3,449,300.00 in exchange for the common stock of Columbia Railway, Gas & Electric Company and its subsidiary, The Parr Shoals Power Company. There was also paid in for common

stock at the time of the organization $449,000.00 in cash. The total amount which has actually been paid in to Broad River Power Company for common stock in money is $2,129,400.00. The physical property acquired by Broad River Power Company under the deed from Columbia Railway Company was set up on the books of the power company at the same figures as those carried on the books of the railway company which was about ten and one-half million dollars. The evidence shows that independent engineers had made a report as to the value of the property, [fol. 263] and that they valued the physical property of Columbia Railway Company on the basis of *reproduction* as of May 31, 1924, at $12,227,000.00, of which $2,250,000.00 represented the railway department. Mr. R. D. Jennison, Vice-President, estimated the reproduction cost of the railway system as of July 31, 1925, at $1,750,000.00 and salvage value at $100,000.00.

"As a part of the transaction under which the conveyance was made Broad River Power Company assumed the outstanding obligations of the railway company except those arising from and in connection with the street railway property. The evidence also shows that Broad River Power Company did in fact assume the payment of the *entire* outstanding bonded indebtedness of the railway company. This is shown by the parol testimony, and it is so stated in the schedules filed in the bankruptcy proceedings; although the resolution of the stockholders (Exhibit A-42) under which the deed was made appears to *except* from the assumption of indebtedness not only the debts arising from and in connection with the street railway property, but also the payment of the bonded indebtedness mentioned in the resolution which it seems was in excess of $3,000,000. It is, therefore, concluded that notwithstanding the stipulation in the resolution the bonded indebtedness was actually assumed. According to the testimony of Mr. J. P. Campbell, the Treasurer of both companies, the difference between the value of the property received and the obligations assumed by the broad River Company was $3,682,394.00 *eliminating the stock agreed to be surrendered.* After the conveyance the common stock of the railway company was reduced from 20,000 shares to 217 shares, all of which was and is owned by the Broad River Power Com-

pany; and the preferred stock was reduced by 8,520 shares to 433 shares, of which Broad River Power Company owns 324 shares. The remaining 109 shares of preferred stock are in the hands of the public, but $100.00 per share was deposited by Broad River Power Company in a bank in New York City to take care of this outstanding preferred stock.

"Since the conveyance of June 15, 1925, the same persons have been executive officers of both the Broad River Power Company and the Columbia railway Company, (or at least this is substantially the case), and the directors have been largely the same. The returns filed as required by law for the years 1925 and 1926 show that the same persons were President, Secretary, Treasurer, Superintendent and General Manager, respectively, of both companies. The evidence further shows that so far as the corporate management is concerned the railway business was carried on after the conveyance almost exactly as it had been prior thereto. Before the conveyance the railway business was done as a department of the general business of the company, and the books were so kept. After the conveyance, to all intents and purposes, the business was carried on as a department of the general business conducted by the Broad River Power Company, with the possible exception of the formal exchange of certain checks, that is to say, there were checks drawn by the railway company to the power company for the power used in the operation of the street car system, and the power company issued a number of checks to the railway company to assist it in its operations, the same amounting to in the aggregate to $115,000.00 or thereabouts. In connection with the latter checks the evidence shows that they were merely charged up as an indebtedness of the railway company and were not represented by notes or other obligations.

"After the conveyance the *current* liabilities of the rail- [fol. 264] way company exceeded its *current* assets by the sum of $24,078.56. This, of course, does not take into account the value of the railway property itself. The testimony of respondents is to the effect that the railway company was left in a solvent condition, but that it was not able to run without assistance and that the assistance rendered was such as would naturally be given by a parent corporation to its subsidiary. The railway company later filed its petition in bankruptcy alleging insolvency."

Under the title, "Conclusions of Law," in making further reference to the question, the Referee makes this statement:

"The case has thus far been discussed as if one company owned all the franchises and property and no conveyance had been made; and the Referee is of the opinion that whatever may be the judgment of the Court upon the merits the cause should be so treated. The merger or enabling act does not require extended consideration. It authorizes a merger or a sale; and the sale might be in whole or in part, but the act, of course, contemplated a real sale, and not a mere formal one. Under the admitted facts and circumstances of the case the transaction between Columbia Railway, Gas & Electric Company and Broad River Power Company was, so far as this proceeding is concerned, tantamount to a merger of the former into the latter, although nominally the railway company retained the street railway property and its corporate existence.

"It is true that mere ownership of the capital stock of one corporation by another does not create an identity of corporate interest between the two companies, or render the holding company the owner of the property of the other, or create the relation of principal and agent, or representative, or *alter ego* between the two; but it is equally true that when the facts show not only stock ownership, common officers and the like, but that the subsidiary company was a mere agency or department of the holding company, or that it was an instrumentality to subserve some special purpose of the holding company, particularly where the public interests are involved, the Court will deal with the substance of the transaction as if separate corporate entities did not exist. United States v. Lehigh Valley R. Co., 220 U. S. 257, 55 L. Ed. 458; United States v. Delaware, L. & W. R. Co., 238 U. S. 516, 59 L. Ed. 1438; Chicago, M. & St. P. R. Co. v. Minneapolis C. & C. Association, 247 U. S. 490, 62 L. Ed. 1229."

We are in full accord with the views expressed by the Referee on this question, that the two corporate respondents should be treated as one corporation, and think the same amply supported by the record of the case, but as stated at the outset, we do not agree with the Referee in holding that the petitions of the petitioners should be dismissed.

Adopting the view of the Referee in holding that the two corporate respondents, Broad River Power Company and Columbia Railway, Gas & Electric Company, under the facts of this case, must be treated as one corporation, let us now consider the other questions involved.

It is not disputed by the respondents that the business conducted by the company, with the exception of that of the Street Railway, has been profitable, but respondents contend that on account of losses sustained on that business the company has the right to abandon the street railway. The petitioners deny this alleged right to the respondents, and contend, that under Acts of 1891, granting the franchise for the combined public operations of respondents [fol. 265] the electric street railway service is inseparately linked with the electric light and power (and gas) services and may not be separately abandoned; that the city ordinance granting the right to operate and requiring daily operation under direction of Council constitute a contract absolutely binding the companies to operate at least for the fifty-year term of the franchise; that the contracts with the development companies providing for operation of the system are valid, subsisting and enforcible in this proceeding; and that the electric street railway system, as was found by Railroad Commission, need not be operated at a loss, but can be made to yield a fair return.

As set forth in the report of the Referee, the Columbia Street Railway Company was incorporated by an Act of the Legislature passed in 1882; the Congaree Gas and Electric Company was incorporated by act of the Legislature passed in 1887; and in 1890 the Columbia Electric Street and Suburban Railway and Electric Power Company was incorporated by Act of the Legislature. In 1891 by Act of the Legislature (see Acts 1891, page 1453) the Columbia Electric Street and Suburban Railway and Electric Power Company was consolidated with the Congaree Gas and Electric Company, under the name of the Columbia Electric Street Railway, Light and Power Company. This Act of the Legislature authorizing the consolidation of the said two companies and thereby creating the Columbia Electric Street Railway, Light and Power Company, not only created a corporation but conferred a franchise and the right to do all of the things set forth therein. Under this Act

the Columbia Electric Street Railway, Light and Power Company was given the franchise to commence, carry on and continue for a period of fifty (50) years the Electric Street Railway, Light and Power services, which are public services. As contended by the petitioners, the powers and privileges held by this new corporation were derived from this Act of incorporation, and were not the mere continuation of the powers formerly granted to the consolidating corporations. "It was the creation de novo of a new corporation with new powers and privileges."

12 R. C. L. 220; 7 R. C. L. 170, Atlantic & Gulf R. R. Co. v. State of Georgia, 98 U. S. 359; 25 L. ed. 185.
Rochester R. R. v. City of Rochester, 205 U. S. 236; 51 L. ed. 784.
R. R. Company v. Gibbes Treasury, 27 S. C. 385.

So much of the Act under consideration pertinent to the questions involved is as follows:

"Sec. 2. That upon such consolidation "The Columbia Street Railway, Light and Power Company" shall be vested with all the rights, franchises, powers and privileges conferred upon the consolidating companies by an Act entitled "An Act to incorporate the Congaree Gas and Electric Company, i. e.

"Sec. 2. The said corporation shall have full power and authority to manufacture, make and sell gas * * * and to furnish such quantities of gas as may be required in or near the city of Columbia, and * * * to carry on and conduct the business of using electricity for any purpose * * * within the said State and to the inhabitants thereof, * * * of the several cities, towns and villages thereof, * * * and for such purposes to erect or lay all necessary poles, pipes and conductors, subject to proper municipal ordinance and restriction, and the supplying of power * * * and the said corporation shall have full power and authority to erect shops, works and such other buildings as may be necessary or desirable. * * *"

and by an Act entitled "An Act to incorporate the Columbia Street and Suburban Railway and Electric Power Company," i. e.

[fol. 266] "Sec. 5. That the said company shall have power to construct or acquire single or double railway tracks, through any street or streets of the City of Columbia, with consent of City Council, and to extend the same five miles into the country, from the State Capitol. And the said company is authorized and empowered to contract for and provide electric motor power for any other purpose of purposes.

"Sec. 6. That said company shall have power to operate their cars in the transportation of passengers and freight over the tracks they may construct or acquire, in said city, with electric power, in suitable carriages, and at such rates as may be fixed upon in the by-laws of the same, * * * "and that said consolidated company be authorized and empowered to purchase and acquire the property, franchise, and privileges of 'The Columbia Street Railway Company,' and upon such purchase said consolidated company be vested with all the rights, powers, franchises, and privileges conferred by an Act entitled "An Act to incorporate the Columbia Street Railway Company," i. e.

"Sec. 5. That the said company shall have power to construct single or double railway tracks through any street or streets of the City of Columbia, and to extend the same five miles beyond the corporate limits of said city: Provided, That the said Company shall so construct said railways that they shall not obstruct the streets through which they pass, and that the company shall be required, after laying said railways, to replace the portion of the streets over which they pass in good condition, and thereafter keep their railway in like good order; in consideration of which the said company shall have such exclusive right of way over said railway as may be necessary for the proper conduct of its business.

Sec. 6. That said company shall have power to transport passengers and freight in suitable and sufficient carriages and cars, at such rates as may be fixed in the by-laws of the same."

"Sec. 6. That the duration of the charter hereby granted shall be for the term of fifty years, and until the final adjournment of the General Assembly next thereafter."

(See Interstate Consol. Street R. Co. v. Massachusetts, 52 L. Ed. U. S. 111.)

It is shown from the record that pursuant to special meeting of the stockholders of the consolidating corporations, duly called and held January 6, 1892, the State charter was duly and regularly accepted, and this company has continuously operated under said charter, and engaged in, conducted and carried on the combined public services authorized under said State charter from that date to the time when the electric railway service was abandoned in March 1927. It is, further, shown from the record that the business of the consolidated company has been very successful. It increased its capital stock from time to time, from $75,000.00 to $3,000,000.00 in the year 1911, (at which time its name was changed to Columbia Railway, Gas and Electric Co.) and during each year the earnings of the company have been sufficient to warrant the payment of a good dividend to the stockholders each year. As pointed out by the Petitioners, and sustained by the record, the balance available, after the payment of operating and maintenance expenses, taxes and interest, for the years 1920, 1921, 1922, 1923 and 1924 for the Columbia Railway, Gas and Electric Company, and the dividends actually paid and surplus set aside by the Broad River Power Company in 1925-1926 were as follows:

[fol. 267] "1920	$121,159.16
1921	236,028.36
1922	215,072.00
1923	364,403.00
1924 (June 30th)	418,751.00
1925 Dividends (Common & Preferred)	334,545.00
1926 Dividends (Common & Preferred)	349,682.00
Surplus	627,402.59
Total	$2,667,043.11"

After looking into the record, we are of the opinion that the Referee was in error in reaching the conclusion that the company during this period sustained "devastating losses" of appalling magnitude."

In 1911 the name of the Columbia Electric Street Railway, Light and Power Company was changed to Columbia

Railway, Gas & Electric Company, and its capital stock increased (to which reference has already been made) by amendment of the charter granted by the Secretary of State under the General Law; and on September 5, 1912, the charter was amended further, under the general law, so as to continue in force in perpetuity, as recited in report of the Referee.

The Company having received it- primary franchise for the operation of all these public services under a grant from the State, we agree with the position of the petitioners that the companies now before this Court, and for the purposes of this case must be considered as one company, in the interest of the public and the parties to this cause, cannot be allowed to abandon the electric railway service on account of the alleged losses on the electric railway department alone. According to our view the electric railway business is inseparable from the light and power business. In this connection, we call attention to the case of Spartanburg v. S. C. Gas and Electric Company, 130 S. C. 125, 125 S. E. 295, which to our minds decides this question. By reference to that case it will be noted that the language granting the franchise is in meaning as permissive as the language granting the franchise in the case at Bar, and the principle declared in that case controls in this case. In support of this position attention is also called to the following authorities:

Fort Smith Light and T. Co. v. Bourland, 267 U. S. 330, 69 L. Ed. 631; Milwaukee Co. v. State of Wisconsin, 252 U. S. 100; 64 L. Ed. 476; Chesapeake and O. R. Co. v. Public Service Com., 242 U. S. 603; 61 L. Ed. 520; Missouri P. R. Co. v. Kansas, 216 U. S. 262; 54 L. Ed. 472; Atlantic Coast Line R. R. Co. v. N. C. Corporation Commission, 206 U. S. 1; 51 L. Ed. 933.

As contended by petitioners, a public service corporation must perform all the services authorized by its charter as long as it retains any of the benefits of the charter granted by the State—and the obligation must be determined by the productiveness of the corporation as a whole. In this connection special attention is directed to the case of Atlantic Coast Line Railroad v. N. C. Corporation Commission, supra, as being in support of this well recognized rule. In that case, "The company was ordered to put on and

maintain a train so as to make connection with the Southern Railway Company at Selma, notwithstanding it was conceded that the operation of such connecting train in itself would necessitate a daily loss to the company. The authority to make such an order was upheld on account of the public nature of the company's business and the resulting power of the State to regulate such business." The Court said in that case, "That power, as we have seen, [fol. 268] takes its origin from *the quasi public nature* of the business in which the carrier is engaged, and enhances that business in its entirety * * *" and stated, further, "as the primal duty of a carrier is to furnish adequate facilities to the public, that duty may well be compelled, although by doing so, as incident some pecuniary loss from rendering such service may result. * * *" As the duty to furnish necessary facilities is co-terminous with the powers of the corporation, the obligation to discharge that duty must be considered in connection with the nature and *productiveness of the corporate business as a whole,* the character of the services required, and the public need for its performance. * * *"

In the case of Missouri P. R. Co. v. Kansas, supra, in passing upon a like question, the Court used this language:

"* * * But where a duty which a corporation is obliged to render is a necessary consequence of the acceptance and continued enjoyment of its corporate rights, those rights not having been surrendered by the corporation, other considerations are, in the nature of things, paramount, since it cannot be said that an order compelling the performance of such a duty at a pecuniary loss is unreasonable. To conclude to the contrary would be but to declare that a corporate charter was purely unilateral; that is, was binding in favor of the corporation as to all rights conferred upon it, and was devoid of obligation as to duties imposed, even although such duties were the absolute correlative of the rights conferred."

The same principle was adhered to in the recent case of Fort Smith Light and Traction Company v. Bourland, 267 U. S. 330; 69 L. Ed. 631. While the Court in that case recognized the right of the company to surrender its franchise and avoid operating its entire system at a loss, made

this statement: "But the Constitution does not confer upon the company the right to continue to enjoy the franchise or indeterminate permit, and escape from the burdens incident to its use."

As is well contended by petitioners, a public service corporation may be required to perform its charter functions even though by so doing a loss on the particular branch of service may be entailed. The criterion is the entire public business of the company. It being established that the electric railway service is inseparately linked with the electric light and power services, it is apparent that under these cases the company may be required to carry on the electric railway service as long as it retains the electric light and power privileges. Whether the electric railway business be considered an adjunct of the light and power business, or whether the electric light and power business be considered an adjunct of the electric railway business, they are all parts of one public business conducted under one franchise.

In addition to the authorities above cited, attention is also called to the following cases: Brownwell, et al. v. Old Colony R. R. Company, 29 L. R. A. 169; Gibbs v. Consolidated Gas Company, 130 U. S. —; 32 L. Ed. 985; Attorney General, Ex Relatione Corporation Commissioner v. Haverhill Gas Light Co. Am. Eng. Annotated cases 1914, C., page 1266; New Orleans Gas Light Co. v. Louisiana Light Mfg. Co. U. S. 29; L. Ed. 516; Harmon v. Columbia & Greenville R. R. Co. 28 S. C. 401; Brabham v. Southern Express Co. et al., 124 S. C., 157; 117 S. E. 368.

The nature of the corporate charter, the franchise and the operation show an inseparability of services and the acceptance of the charter constitutes a contract between the State and the corporation. See also, Trustees of Dartmouth College v. Woodward, 4th Wheat 518; 4 L. Ed. 629.

Also the principle is thus stated in Corpus Juris:

[fol. 269] "When a special act of incorporation has been accepted according to its terms, all conditions precedent being performed so as to render the acceptance valid and sufficient, the corporation comes into existence, and a binding contract between the State on the one hand and the incorporators and corporation on the other results, so that all the rights, duties and liabilities expressed or implied in the act attach, and cannot thereafter be withdrawn or im-

paired by the state in violation of the grant or cast off by the incorporators or the corporation without the consent of the state. * * *" (14 C. J., 110.)

There being a contract between the State and the company this contract must be carried out by the company, the company must perform all of the services contemplated by the contract; and, further, the contract must be treated as an entirety. This principle must not be overlooked.

It is the contention of the petitioners that a franchise is the privilege of doing that "which does not belong to citizens of the country generally by common right," and that such franchises are granted primarily for the public benefit and when accepted constitute a contract, and that the grantee undertakes in consideration for the privilege granted to perform the services authorized. This position, in my opinion, is well supported by authority and cannot be successfully questioned. See: 12 R. C. L. 174-175; 19 U. S. L. Ed. 844; 29 U. S. L. Ed. 516; 12 R. C. L. 179-180; 26 C. J. 1014; 12 R. C. L. 199-200; McCandless v. R. R. Co., 38 S. C., 103; 26 C. J. 1030; Brownell et al. v. Old Colony R. R. Co. (Mass.), 29 L. R. A. 169.

Therefore, the Company cannot be permitted to abandon the electric railway service while retaining the electric light and power privileges.

Furthermore, the electric railway service is connected with the electric light and power business and is inseparable from it by reason of the manner of construction and operation as well as by the charter and franchise contract. It appears from the record that during the thirty-six years the company has operated the company has erected power plants for the generation of electricity to be used for operating the railway system and to be sold for light and power. It has erected poles on the rights of way it has acquired and hung wires on the poles to be used for the purpose of the transmission of such electric power for the operation of the railway and for sale to the public for lighting purposes and for power to be used for other purposes. The company has, also, erected a sub-station used for the conversion of power for any and all purposes, built administrative offices and has done other work and acquired the greater part of its property for the joint use

of the electric railway service and the electric light and power service.

It also appears from the record in the case that when the company constructed or acquired its suburban electric railway lines, "the very same poles in every case which were used for carrying current to operate the railway were also used to carry the current for sale as electric light and power to the communities served by such electric railway."

Thus these lines particularly were constructed and acquired directly under the company's primary frachise from the State for the operation of the Electric Street Railway, Light and Power Business. "Thus, for nearly forty years these phases of this business have gone hand in hand; they have grown and developed from their infancy in 1891 to their present maturity; they are as inseparable as parts of the human body and cannot now be operated independently." This contention is substantiated by the record in [fol. 270] the case. It also appears from the evidence in the case that during all of this period of combined operation the returns from the railway have been used for the development of the company's general property, gone into a common fund and been used and expended for general corporate purposes. The patrons of the railway service have, therefore, contributed to the general upbuilding of the property and system which the company now desires to use entirely for the electric light and power and gas business. To permit this would mean the destruction of the electric railway service, for the railway service cannot be carried on in the community in question without the use of the property which is now being used and operated for electric light and power purposes. It, further, appears from the record in the case, that the company is now using for its electric light and power purposes the power plants, substations, poles, rights of way and car barns constructed or acquired under its franchise for electric railway purposes, and that this property now being retained and used for electric light and power property comprises the most vital parts of the electric railway system.

We agree with the position of petitioners, that the effect of Act of 1891, creating the Columbia Street Railway, Light and Power Company, was to confer upon one corporation the consolidated public utility privileges for this commu-

nity, gas and electric, including electric railway, electric light and electric power; that it was a consolidated grant of electric privileges, street railway light and power inseparably linked, and that the object in view was that the public might be better served with these utilities. We also agree with the position of petitioners, that whatever may have been the case before acceptance that when the corporation accepted these consolidated privileges and acted upon them and built its power plants, substations, electric lines, poles and other electric railway facilities, all as parts of one electric business, it cannot now be permitted to separate the electric railway from the electric light and power phases of business.

In our opinion the cases relied on by the Referee, Railroad Commission v. Eastern Texas R. R. Co., 264 U. S., 79, 68 L. Ed. 569; and Brooks-Scanlon Co. v. Railroad Commission, 251 U. S. 369; 64 L. Ed. 323, are not applicable to the questions before this Court. Each of the companies in those cases had been organized principally to conduct a lumber business, and the railroad business conducted was merely incidental, and the lumber business having been completed the Court held that the company could not justly be compelled to carry on the railroad business at a loss. According to our opinion these cases do not support the Referee's position. In the last mentioned case, Brooks-Scanlon Co. v. Railroad Commission, the Court by the use of the following language upheld the position the petitioners in the case at bar are contending for: "It is true that if a railroad continues to exercise the power conferred upon it by a charter from a State, the State may require it to fulfil an obligation imposed by charter, even though fulfilment in that particular may cause a loss," citing Missouri P. R. Co. v. Kansas, 216 U. S. 262, 276, 278; 54 L. Ed. 472, 478, 479.

The case of Bullock v. State of Florida, 254 U. S. 513, 65 L. Ed. 380, cited by the Referee as being in support of the position taken by him also involved a logging road and the question decided does not throw any light on the questions now before this Court, as we view the case. Neither do we think the other cases relied on by the Referee and the respondents controlling in the case at bar.

Even if the case should be decided upon the theory that the company was merely operating under a "permissive franchise or indeterminate permit," as contended by the respondents (which we do not concede), the corporate re-
[fol. 271] spondents could not escape the responsibility of operating the street cars. In this connection see the case of Fort Smith Light and Traction Company, supra, (69 L. Ed. U. S. 631). In this case the Court discusses the question under the theory of "direct contractual obligation" and also under the theory of a "permissive franchise," and under both theories reaches the conclusion that the light and traction company should not be permitted to escape the obligation it was under to operate the street cars on a certain line, even though the operation entailed a heavy loss. To operate the line in question in that case necessitated relaying the tracks thereon at a cost of $11,000.00 the allocated daily earnings of this small part of the system were $2.40, the cost of operating $8.25; and the total net earnings of the system in the year 1922 (the year prior to the commencement of the suit) were $16,000.00, which amount, as stated by the Court, is about 1.7 per cent of $934,540, the estimated value of the property. The decision of the courts of the State of Arkansas, in upholding an order refusing to permit the company to abandon the line of street railway in question, was affirmed. In the opinion of the Court, delivered by Mr. Justice Brandeis, it is stated that "it (the Fort Smith Light and Traction Company) cannot, in the absence of contract, be compelled to continue to operate its system at a loss," recognizing, of course, the right of the company, in the absence of a contract, to abandon its franchise and cease business altogether. But Mr. Justice Brandeis adds these words: "But the Constitution does not confer upon the company the right to continue to enjoy the franchise or indeterminate permit, and escape from the burdens incident to its use."

Whether the franchise is granted by ordinance of the city or by act of the Legislature, the principle is the same.

It is contended by petitioners, with which position we are in full accord, that when the horse and electric street railway franchise had been transferred to and become

blended into Columbia Electric Street Railway Light and Power Company, the name being later changed to Columbia Railway, Gas and Electric Company, neither the said Company nor any of its successors can have the benefits of any of the franchises granted without performing the electric street railway service. In this connection see the case of Brownell et al. v. Old Colony R. R. Co. (Mass.) 29 L. R. A. 169, cited above. In that case a corporation was granted a franchise for the purpose of operating a ferry, and later was authorized to transfer its charter with all of its rights and powers to the Fairhaven Branch R. R. Co. Following this transaction the Railroad Company operated the ferry in connection with and seemingly as a part of its railroad line for some time. In this connection "it was the same in effect as if the railroad company by its original charter had been authorized to establish and operate the ferry as a part of its line." Later, the defendant in that case Old Colony R. R. Co., succeeded to all the rights of the Fairhaven Branch R. R. Co. Soon thereafter the Old Colony R. R. Co., defendant in the case, abandoned the "ferry" branch of its franchise, assigning as a reason for such abandonment that that branch of its business was not profitable and could be maintained only at heavy loss. The Court required the Old Colony R. R. Co. to reinstate and operate the ferry upon the principle that the ferry franchise had become blended with the railroad franchise and that it was incumbent upon the company to perform all of the purposes of the blended franchise, the Court saying:

"Its franchises are granted for the public good, and in exercising them it is largely subject to the control and direction of the legislature. Either by virtue of the police power or of the reserved power to alter charters, many acts may be required which involve expanse, and which a railroad corporation, or other corporation to which like rules [fol. 272] would apply, would not, if left to itself, undertake. Numerous illustrations of this are found in the decisions of this court, as well as in those elsewhere * * * (citing many cases)."

The Court, further, stated:

"The defendant further contends that the only liability of the defendant for failure to operate the ferry is a liability to forfeit the ferry charter. This argument cannot prevail, since the *blending* of the ferry franchise with that of the railroad company * * *"

"The effect of the transaction was to transfer the duties from one corporation to another, after which the original corporation had no further interest in the matter; but the railroad company was bound by law to perform all and singular the duties of the ferry company."

The statement of facts in this case are analagous to those involved in the case at bar and the principles announced in that case should have a direct bearing on the decision of the case at bar. Attention is also called to the following cases:

Gibbs v. Consolidated Gas Co. 32 L. Ed. U. S. 979; Attorney General, Ex Relatione Corporation Commissioner v. Haverhill Gas Light Co. (Mass.) 1914 C. Annotated Cases, page 1266; New Orleans Gas Light Co. v. Louisiana Light Etc., Mfg. Co. 29 L. Ed. U. S. 516; Harman v. Columbia & Greenville R. R. Co., 28 S. C. 401; Brabham v. Southern Express Co., et al. 124 S. C. 158; Spartanburg v. S. C. Gas and Electric Co. supra, 130 S. C. 126.

As to the position of the Referee in holding that "the manifest purpose of the consolidating Act (Act of 1891) was to give the new company *permission* * * * to exercise the *several* franchises or any of them upon complying with their *respective* conditions, which shows their independence." We are not in accord with this view, but on the other hand we agree with the position of the petitioners, that the manifest purpose of the Act was to provide for a consolidation in order that the public might as a result be better served. By reference to the Act it will be seen that the Act itself recites the fact that the consolidating companies had "agreed to consolidate the property, franchises and privileges owned * * * by them," and the Act authorized the companies to "consolidate their property, franchises and privileges into *one* company," and further provided that upon such consolidation the new company should "be vested with all their rights, franchises, powers,

and privileges." Therefore, when the new company in compliance with this Act effected the consolidation, and, in pursuance of the provisions of the Act, built, constructed and operated "its electric railway, light and power properties, as parts of one business for nearly 40 years" these rights, powers and privileges became inseparably bound together and can not be separated. As contended by the petitioners, "such diversity as there was in the conditions of the former franchises became obliterated and extinguished by the major purpose of the new Act—namely the *consolidation* of all the powers into one Company *for the greater benefit* of the public." According to our view the Court should hold, under the facts in the case, that there is an interdependence between the electric railway and the electric light and power business in the case at bar, as was held in the Spartanburg case, supra, (130 S. C. 125). It is true, as stated in one of the cases cited by the Referee as sustaining his position, 105 Fed. 123, "that before any of the privileges are exercised, the franchise cannot be forfeited for failure to exercise any particular one of the rights granted," but the situation is very different when all the [fol. 273] situation is very different when all the privileges granted, as in the case at bar, have been exercised and "public business thereby inaugurated which is dependent upon the continued joint operation of the privileges." Even in these cases to which the Referee calls attention, above mentioned, it is stated that "where the powers are inseparably connected with each other," the corporation may be required to exercise all its corporated powers as a condition of the exercise of the others. In this connection, see the following cases cited herein: 69 L. Ed. 631; 61 L. Ed. 520; 54 L. Ed. 472; 51 L. Ed. 933; Brownell et al. v. Old Colony R. R. Co., (Mass.) 29 L. R. A. 169.

Franchises must be construed in favor of and for the benefit of the public and against the party to whom the franchise is granted. In 26 C. J. 1031-1033 the principle is stated thus:

"Grants of franchises are strictly construed in favor of the public * * *

Where a grant is susceptible of two meanings, one restricting and the other extending the powers under a

franchise, that construction is to be adopted which works the least harm to the State." In the case of Blair v. Chicago, 50 L. Ed. U. S. 801, the Court approved this statement of the rule as "sound doctrine, nd should be vigilantly observed and inforced."

This principle should be applied in the case at bar, and, therefore, the conclusion that the charter and franchise in question and operations thereunder must be construed as having authorized the exercise of the electric light and power privileges only upon condition that the electric railway service be furnished is inescapable.

In the report of the Referee it is suggested that it would not be conductive to the public interest to requre the patrons of the light and power utility to contribute to the maintenance of the electric railway, the suggestion being based, it appears, upon the assumption that the electric railway service is an entirely different public utility from the electric light and power utility, which assumption is erroneous. As has already been pointed out, the Act of 1891 consolidating the franchise, created one public utility company, the Columbia Electric Street Railway Light and Power Company. Since the passage of that Act there has been but one public utility in the City of Columbia community, and from that time there was no longer a street railway company, but, as construed by petitioners, an electric-street-railway-light and power-company, and from that time to the present "the patrons of the electric railway have contributed to the electric light and power and *vice versa*." This conclusion is well supported by the record in the case. Whether the power plants, substations, poles, rights of way, other property and facilities going to make up the electric railway, light and power system were built or constructed more from the contributions of the patrons of the electric street railway or from the patrons of the electric light and power it is impossible to ascertain. The entire plant or system is necessary for the operation of both, the electric street railway and light and power. In this connection see the case of Chesapeake and Ohio Ry. Co. v. Public Service Commission, 61 L. Ed. U. S. 520. As was stated by the Court in that case, which is applicable to the case at bar:

"An obligation to use it for both was imposed by law, and so could not be thrown off or extinguished by any act or commission of the Railway Company."

In addition to the case above cited, we call attention at this [fol. 274] time to the cases of Spartanburg v. S. C. Gas and Electric Co., supra, (130 S. C. 126); Fort Smith Light and Power Co., supra, (69 L. Ed. U. S. 631).

The position of the respondents that there was a valid separation under the merger Act (Acts of 1925, page 842) of the electric railway from the electric light and power property, is sufficiently answered in the report of the Referee, which is adverse to respondents' contention. In our opinion, the merger Act was not intended to permit and did not authorize a separation of the electric railway from the light and power property.

A study of the record does not show any ground for the contention that the Act was a part of the canal settlement, and in our opinion respondents' contention in this respect is entirely without support. Furthermore, the merger Act itself does not purport to authorize any merger or transfer which could possibly be construed to mean that the transferee company should in any sense be released from the electric railway obligations of the Columbia Railway, Gas and Electric Company. The Act provides that the merger, consolidation or sale authorized by the Act should be "made without prejudice * * * to any rights of any of the creditors of any of the companies so selling." and also that the company to which the franchises were authorized to be made, "shall hold the same with all the rights, powers and privileges granted to the original holder thereof *subject only to the restrictions, requirements and conditions in the said franchises contained.*" It is clear that the Merger Act (Acts 1925, page 842) was intended, and should be construed to mean, to authorize a merger or transfer without in any sense releasing the company "receiving such franchises and property from the obligations of the transferring or merging company," and in our opinion furnishes no justification or authority for the separation of the railway department from that of the electric light and power property and the discontinuance of the electric railway service. If such was the purpose and in-

tention of the respondents when the Act was passed, it is not disclosed by the wording of the Act, is not authorized by the Act, and should not be permitted by the Courts. If it be contended that the Act is not clear, that there is an ambiguity in the language used, then, following the well-recognized rule, such ambiguity should be resolved in favor of the public and against the company.

Furthermore, the facts in the case, as disclosed by the record, show that there has been no valid legal separation, but a merger of the two companies. It clearly appears from the record in the case that the Broad River Power Company owned all of the common stock in the Columbia Railway, Gas and Electric Company, consisting of 20,000 shares, and also owned all of the 8,953 shares of the preferred stock in said company, except 109 shares, for which it has deposited in a bank $100.00 per share. Petitioners contend that this deposit was made for the purpose of preventing criticism. This contention finds support in the record. The record also shows that when this transaction took place the Broad River Power Company retired all of the common stock with the exception of 217 shares and retired all of the preferred stock except 433 shares. Another incident which should have a bearing on the case is the fact that the companies had the same officers; the same President, Vice-President, Secretary, Treasurer, Assistant Secretary, Assistant Treasurer, Manager, Auditor, and Bookkeeper. The record in the case also shows that the Auditor of the two companies was paid for his services by the same check. The companies also for the purpose of conducting the work used the same trucks, in which the workmen were hauled to their place of work on the tracks and on the elec-
[fol. 275] tric wires and electric lights.

Another important feature of the case to which we direct attention is the advertising matter gotten out by the Broad River Power Company, through its President, Mr. W. S. Barstow, in connection with the sale of bonds of the Broad River Power Company, published in the Commercial and Financial Chronical, of New York City, dated November 15, 1924. Included in the matters contained therein we call attention to the following:

"The electric properties which the Broad River Power Company will control and operate include, in addition to the

new steam plant, two hydro-electric power plants and a steam power plant * * *. The electric railway property consists of thirty miles of standard guage trackage and sufficient equipment for operation.

"The Broad River Power Company with its auxiliary companies will continue to supply electric light and power, gas and electric railway service through the territory in and about Columbia, S. C.

"The Company, Broad River Power Company, through subsidiaries, does without competition the entire electric light, power, gas and street railway business in Columbia, S. C. and environs * * *."

There was also published in said Commercial and Financial Chronicle, in issue of July 11, 1925, relative to the sale of Broad River Power Company bonds by Pynchon and Company and other houses the following:

"Broad River Power Company, organized in July, 1924, in South Carolina, *has acquired through merger* all the physical properties, franchises and other assets (except electric railway properties) of its former subsidiaries, Columbia Railway, Gas and Electric Company, Parr Shoals Power Company and Columbia Gas Light Company. The electric railway property will continue as Columbia Railway, Gas and Electric Company, whose entire common stock is owned by Broad River Power Company."

In the transfer that took place the Columbia Railway, Gas and Electric Company executed a deed in which it undertook to transfer to the Broad River Power Company "all the electric light and power and gas properties, including power, plants, substations, car barns, and poles used exclusively for the electric railway service, reserving only the rails, cross ties, guy wires and cars." It is to be noted that in this transaction no cash consideration at the time was paid, it being stated that the Broad River Power Company was to assume the obligations with reference to the alleged department transferred in the manner above set forth. The value of the property transferred in the manner aforesaid to the Broad River Power Company, according to the sworn statement of the Auditor, Mr. King, was $11,406,430, against which the liabilities amounted to $7,053,-

211,88, so that the net value of this physical property, etc. so transferred amounted to $4,353,511.55. In this connection we call attention to the following testimony of Mr. King, the Auditor:

"Q. I am speaking of this—you gave me a figure of four million some odd thousand dollars—what consideration passed for that equity of four million some odd thousand dollars, which was the value of the assets above the liabilities which you gave me, other than the cancellation of that stock?

"A. I can't say that there was any.

"Q. Can you say that there was any?

[fol. 276] "A. I can't say that there was.

"Q. Do the books show any?

"A. Not to my knowledge.

"Q. You have examined the books?

"A. Yes, sir."

Mr. Campbell, Treasurer of the company, in the course of his testimony stated that according to his figures the difference between the values of the property so transferred and the obligations assumed by the company was $3,682,-394.00. Mr. Campbell further stated that the purpose and object of the alleged separation was to put the Broad River Power Company in a position to sell its bonds to better advantage and that the consideration for this transfer was the surrender of the stock in the Columbia Railway, Gas and Electric Company and the Parr Shoals Power Company, worth as he said one dollar.

Just here attention is called to the fact that after this alleged separation, the Columbia Railway, Gas and Electric Company was left with a deficiency of current assets. The current assets amounted to $75,145.00 and the current liabilities amounted to $99,224.48, leaving a net deficiency of $24,078.56. This placed the Columbia Railway, Gas and Electric Company in such position that it could not carry out the obligation to furnish the street railway service without getting assistance, as testified by the witness, Mr. Jennison, of the Company. It is claimed by the Broad River Power Company that it furnished the needed amount for operating to the Columbia Railway, Gas and Electric Company. No note or other paper was taken from the Colum-

bia Railway, Gas and Electric Company for any amount of money so furnished but a charge was simply made on the books and no due date was stated. Mr. Costello, who was the Auditor for both the Broad River Power Company and the Columbia Railway, Gas and Electric Company, in the course of his testimony, testified to the following statement:

"Q. On February 28, 1927, the Broad River Power Company advanced the Columbia Railway, Gas and Electric Company to meet its deficit, $112,500.00, what security was that?

"A. No security.

"Q. When is it due?

"A. No due date.

"Q. Is that the way you do business?

"A. It so happens the Broad River Power Company owns the stock of the Columbia Railway, Gas and Electric Company.

"Q. Demand no security between themselves?

"A. The only thing they have is these balances between themselves."

In this connection it is well to note that during the hearing of the cause a voluntary petition in bankruptcy was filed by the Columbia Railway, Gas and Electric Company, the disposition of which petition is stated in the report of the Referee. In its schedule, attached to said petition in bankruptcy, the Columbia Railway, Gas and Electric Company listed its total assets at $50,444.09 and its total liabilities at $3,267,978.75. In the schedule it was stated that the bonds, amounting to $3,121,500.00, had been assumed by the Broad River Power Company. It was also set forth in the schedule attached to the petition in bankruptcy that "of the total unsecured claims, amounting to $123,204.02, the Broad River Power Company, or its allied interests, claimed $122,385.45."

All of these circumstances force us to the conclusion that there has been a merger of the two companies, Columbia Railway, Gas and Electric Company and the Broad River Power Company. In addition to the authorities already [fol. 277] cited herein, we call attention to the following cases:

Brown v. Am. Ry. Express Co., 128 S. C. 428; Davis v. Alexander (U. S.) 70 L. Ed. 186; Huggins v. Com. Sav. Bank, 940 S. E. 177; Terry v. Sou. Express Co., 141 S. E. 144.

As conceded by petitioners, mere acquisition and control of stock in one corporation by another corporation does not necessarily for all purposes make the corporations the same, but where it appears that the transaction was such as to give the corporation acquiring and controlling the stock an opportunity to benefit or to injure the interest of the other, the courts should grant relief when right and justice require it, as in the case at bar. We are convinced that the Columbia Railway, Gas and Electric Company, by means of the several transactions referred to herein, was converted into a mere agency or instrumentality of the Broad River Power Company for doings its bidding and that the two corporations, for the purposes of this proceeding, should be considered, treated and dealt with as one. In support of this view special attention is called to the case of Chicago, M. & St. P. Ry. Co. v. Minneapolis C. & C. Association, 247 U. S. 490; 62 L. Ed. 1229.

Mr. Justice Clark, in delivering the opinion of the court in that case, in discussing a similar question to the one now under consideration in the case at bar, made this statement:

"With the facts thus summarized, it is difficult to conceive of a plan for the control of a jointly owned company (two companies owned the company involved in this case) and for the operation of a jointly owned track more complete than this one is, and it is sheer sophistry to argue that, because it is technically a separate legal entity, the Eastern Company is an independent public carrier, free in the conduct of its business from the control of the two companies which own it, and therefore free to impose separate carrying charges upon the public," and stated the rule thus: "In such cases the courts will not permit themselves to be blinded or deceived by mere forms of law, but, regardless of fictions, will deal with the substance of the transactions involved as if the corporate agency did not exist and as the justice of the case may require."

Applying these principles to the facts involved in the case at bar, that the Broad River Power Company got into its possession and control from the Columbia Railway, Gas and Electric Company four million dollars net worth of property, and also the franchise valued at $1,561,000.00 without paying any consideration for the same, and leaving the Columbia Railway, Gas and Electric Company in an insolvent and helpless condition, unable to function, the conclusion is inescapable that the corporations are merged, and further that the Broad River Power Company should be held liable to carry out the obligation of the Columbia Railway, Gas and Electric Company to furnish electric street railway service. Terry Packing Company v. Southern Express Co. (141 S. E. 149) supra, Huggins v. Com. Savings Bank (140 S. E. 177) supra, Brabham v. So. Express Co. (124 S. C. 157) supra; Chicago, M. & St. P. v. Co. & Co. Minneapolis, 62 L. Ed. (U. S.) 1229; American Ry. Express Co. v. Commonwealth of Ky., 71 L. Ed. U. S. 639, and other cases cited above.

As to the efforts of the Broad River Power Co. to separate the electric railway from the electric light and power franchise, see also the case of Old Colony Trust Co. v. Omaha, 230 U. S. 100; 57 L. Ed. 1410.

An important position of the petitioners, and with which we agree, is that the City of Columbia having passed * * * ordinances granting the right to operate, and the companies having agreed to the provisions of the same [fol. 278] and commenced to operate thereunder and accepted the benefits to be derived therefrom, a binding contract was constituted, requiring operation. Detroit v. Detroit Citizens' Street Ry. Co., 184 U. S. 387; 46 L. Ed. 607. In that case the Court said:

"The original ordinance * * * was plainly a proposition on the part of the city to grant to the company the use of its streets, in consideration that the company lay its tracks and operate a railway thereon upon certain conditions prescribed by the ordinance. This proposition when accepted by the company and the road built and operated as specified, became a contract * * *." Detroit v. Detroit Street Ry. Co., supra; Spartanburg v. S. C. Gas & Electric Co., (130 S. C. 125) supra.

"A public utility cannot, because of loss, escape obligations voluntarily assumed." Milwaukee Electric Ry. & Light Co. v. Wisconsin, 252 U. S. 100, 105; 64 L. Ed. 476, 10 A. L. R. 892, 40 Sup. Ct. Rep. 306. Fort Smith L. & Tr. Co. v. Bourbond, 267 U. S. 330; 69 L. Ed. 631.

Under the principles stated in these cases, it is clear that the company involved in the case at bar is bound by contract with the City of Columbia to carry on the operations contemplated thereunder, including the operation of the street electric railway against which alleged losses, if established, would afford no defense.

As to the facts on this phase of the case, the record shows that when the company was incorporated in 1891, with the right, in addition to other things, to operate an electric railway for a period of fifty years, with the consent of the City Council of the City of Columbia, the Company made written application to the Council of said City, in 1892, asking for such consent, and actually submitted along with said application a proposed ordinance in accordance with the wishes and desires of the company. In October, 1892, the Council of said City adopted an ordinance which authorized the company to lay its tracks, "to erect poles and hang feed wires thereon along such streets as may be most convenient." It also provided that cars should be operated on certain schedule, and prescribed a penalty for failure to comply with such provision, said ordinance provided for the same to be amended so that the Council might regulate by ordinance the manner of operating the said cars, in such manner as the public welfare demanded. Under the authority of this ordinance, the company placed its railway tracks, erected poles and hung feed wires thereon and commenced the operation of the street railway system. A number of times, from 1895 to 1921, the company filed petitions to lay additional tracks. The petitions were granted by the passage of an ordinance in each instance, and in the ordinances so passed this provision was written, "the privileges are upon the express condition that the said Company comply with all the rules, regulations and ordinances of the City * * *, now of force or hereafter to be enacted relating to the construction of street railways and the operation of the same." It was under these ordi-

nances that the company laid their tracks and erected poles for said purpose in the said City, and, as contended by petitioners, the said ordinances "constituted a special supplemental contract with the City of Columbia, and amounted to the grant of a secondary franchise for the operation of the electric railway system, in the City of Columbia."

The authorities are practically agreed that city ordinances which grant the right to a street railway company, or any similar public utility, to use the streets constitute a contract. See the following authorities:

Henderson Water Company v. Corporation Commission of North Carolina, et al., 278 S. C. R. 282, 70 L. Ed. 273; Fort Smith Light & T. Co. v. Bourland, 267 U. S. 330, 69 L. Ed. 631; St. Cloud Public Service Co. v. City of St. [fol. 279] Cloud, 265 U. S. —, 68 L. Ed. 1050; Paducah v. Paducah Railway Co., 261 U. S. 267, 43 Sup. Ct. Rep. 335, 67 L. Ed. 647; Georgia Railway & Power Co. v. Town of Decatur, 262 U. S. 431, 67 L. Ed. 1065; Southern Iowa Electric Co. v. Chariton, 255 U. S. 539, 65 L. Ed. 754; Milwaukee Electric Railway & Light Co. v. State of Wisconsin, etc., 252 U. S. 100, 64 L. Ed. 476; Columbus R. P. & Light Co. v. Columbus, 249 U. S. 399, 63 L. Ed. 669; N. Y. Elec. Lines Co. v. Empire City Subway Co., 253 U. S. 179, 59 L. Ed. 184; Cleveland v. Cleveland Electric Co., 201 U. S. 529, 50 L. Ed. 854; Cleveland v. Cleveland City R. Co., 194 U. S. 517, 48 L. Ed. 1102; Southern Wis. Ry. Co. v. Madison, 59 L. Ed. 739; Michigan Ry. Co. v. Lansing, 260 Fed. 322; Minneapolis v. Minneapolis St. Ry. Co., 215 U. S. 417, L. Ed. 592; City R. Co. v. Citizens St. R. R. Co., 166 U. S. 558, 41 L. Ed. 1114; Spartanburg v. Spartanburg Gas & Elec. Co., 130 S. C. 125; Charleston Consolidated Ry. & Lighting Co. v. City Council of Charleston, 92 S. C. 127; Sumter Gas & Power Co. v. Sumter, 283 Fed. 931 (4th Circ. 1922). See also 10 A. L. R. (note) 897 (citing many authorities from various jurisdictions, and authorities from Cood Corp. p. 3700, S. 913 (citing and abstracting many cases).

It clearly appears that under the terms of contract, created by ordinances adopted by Council of the City of Columbia, even if losses be conceded in the operation of the street car system, such could not constitute a defense. In this connection attention is directed to the following authorities:

6 A. L. R. 1659; 10 A. L. R. 867; Spartanburg v. S. C. Gas & Electric Co., 130 S. C. 126; Thomas et al. v. Spartanburg Ry. & Gas Co., 114 S. C. 74; Columbus Railway Power and Light Co. v. City of Columbus, Ohio, 249 U. S. 399, 63 L. Ed. 669; Vicksburg Waterworks Co., 206 U. S. 496, 51 L. Ed. 1155. In our opinion the cases are squarely in point and conclusive of the question now under consideration. The contention of the company that the ordinances simply granted a permissive right to operate the electric railway cars upon the streets of the City cannot be sustained. The rights granted were mutually binding and required operation by the company of the electric street railway cars. In the case of M. & St. P. R. R. Co. v. Hoyt, 149 U. S. 1, 37 L. Ed. 625, cited and relied on by the respondents, the court concludes with this statement of the rule:

"It certainly was not intended to question the principles, frequently declared in decisions of this court, that if a party charge himself with an obligation possible to be performed, he must abide by it unless performance is rendered impossible by the act of God, the law, or the other party. Unforeseen difficulties will not excuse performance. Where the parties have made no provision for a dispensation, the terms of the contract must prevail." See cases cited in said case. As was said by the court in the case of Doy v. United States, 245 U. S. 159, 62 L. Ed. 219: "One who makes a contract can never be absolutely certain that he will be able to perform it when the time comes, and the very essence of it is that he takes the risk within the limits of his undertaking. But when the scope of the undertaking is fixed, that is merely another way of saying that the contractor takes the risk of the obstacles to that extent."

Attention is also called to the following authorities:

Georgia Ry. & Power Co. v. Decatur, 262 U. S. 432, 67 L. Ed. 1065; Southern Iowa Electric Co. v. Chariton, 255 U. S. 539, 65 L. Ed. 764; Milwaukee E. R. & Light and Power Co. v. Wisconsin 252 U. S. 100, 64 L. Ed. 476; 10 A. L. R. 892.

As to the consideration supporting the contract, it is suffi- [fol. 280] cient to state that "the consideration received by the company is the right to operate and use the streets, and the consideration received by the city is the obligation of

the company to operate." The contract is supported by these mutual considerations. New York Electric Co. v. Empire City Subway Co., 235 U. S. 179, 59 L. Ed. 184; Owensboro v. Cumberland Tel. & Tel. Co., 230 U. S. 58, 57 L. Ed. 1389; City R. Co. v. Citizens St. Ry. Co., 166 U. S. 557, 41 L. Ed. 1114; Detroit v. Detroit Citizens' St. Ry., 184 U. S., 46 L. Ed. 592; Potwin Place v. Topeka R. R., 37 Am. St. Rep. 312.

As to the development company contracts involved in the proceeding, in passing upon the questions connected with the same it is well to keep in mind the principle stated by the court in the case of City of Potwin Place v. Topeka Ry. Co., 37 A. S. R. 316, to-wit:

"* * * whether the company's duties be denomin ted contract obligations, or duties imposed by the terms on which a franchise has been granted, the duties are essentially public, and such that no adequate remedy in the ordinary course of legal proceedings is afforded the plaintiff and its citizens."

As contended by respondents, and shown by the record to be correct statement of the facts, much of the electric railway system was either constructed or acquired under contracts with the several development companies, which required permanent operation from the very nature of the transactions. Take for instance the Shandon line, it was acquired in the year 1909 by deed executed in pursuance of a lease made in 1902 for 99 years, in which it was stipulated that the company will, during said period, continuously operate said line of railway by running at least one car per hour each way over same between the hours of 7:30 A. M. and 8 P. M. daily * * *."

As to the Hyatt's Pavilion—Columbia College—North Columbia line, it was acquired, 1906, under contract with the North Columbia Land Company, in which contract it was provided that after the completion of the line the company would "thenceforth maintain and keep it in good condition and repair, and run and operate street railway cars over the said line and extension in connection with the lines of street railway in and near the said City of Columbia on convenient and reasonable schedules of not less than one car for every hour, from 8 o'clock in the morning

to 8 o'clock at night, and as much later and oftener as travel will warrant, of each day, at one fare of not more than 5c. for each passenger from and to any of the usual stopping places on any of its lines, including the line of said Improvement Company and the proposed extension." (Charters p. 15.)

The Shandon Annex line of street railway was built and operated under contract made in the year 1910, which contract provided that the company would maintain a "regular schedule of not less than one car per hour to the corner of Main and Gervais Streets, and furnish transfers in the usual manner, and that after the delivery of an absolute transfer of the lines and appurtenances including the right of way in perpetuity * * *, the railway company agrees to put in operation the schedule above described and to maintain the same." In connection with this line, Shandon Annex, we call attention to the statement of the court in the Western Union Tel. Company v. Penn. Co., (C. C. A.) 129 Fed. 849, to wit:

"* * * Apart from those contracts, which, from their inherent nature, imply a power of revocation, it would seem that the intention of parties to an agreement, that it should be perpetual and without limit as to duration, could not be more properly expressed than by silence as to any time limit, or power of revocation * * *."

[fol. 281] The Eau Claire line of railway which was acrequired in 1900, was constructed by the Columbia and Eau Claire Electric Railway Company for the purpose of giving a means of transportation to the people of the Hyatt or Eau Claire community, and the right of way for said railway was granted in consideration of "the advantage and benefit to the intervening lands" which the construction of such railway would produce.

The line of electric railway known as the Colonial Heights Line, acquired in 1912, was buit in 1907, and was constructed by the Suburban Homes Company, which company was engaged in selling lots in the section known as Colonial Heights, under a contract in writing guaranteeing electric railway transportation to the City of Columbia to be furnished not later than a year from the date of said

written contract or contracts, that is, to begin to furnish the transportation by that time.

As a matter of fact, all of these lines of railway were to furnish a way of transportation to and from the City of Columbia to the people of these several communities, and the said electric railway lines constituted the principal inducement in the purchase of lots at the several places and becoming settlers there, it being provided in the contracts that the electric railway transportation would be permanent.

It may also be mentioned that the rights of way and poles used in connection with furnishing the electric railway service in these several sections were also used for carrying the electric current which was sold for light and power, and, furthermore, to this time, the Broad River Power Company is still using the same poles and rights of way for the purpose of carrying electricity sold to the people for light and power.

We dd not agree with the conclusion reached by the Referee as to these lines, but, on the other hand, it is our view that the contracts embrace and require the operation of the entire system. Further, we agree with the contention of petitioners, that the obligation resulting from these development company contracts is valid and subsisting. and is such an obligation as is enforceable in this proceeding. In support of this position, in addition to authorities already cited we call attention to the following: Franklin Telegraph Co. v. Harrison, 36 U. S. (L. Ed.) 776; M'Kell v. Chesapeake & Ohio Ry. Co.. 175 Fed. 321 (1910; Western Union Tel. Co. v. Penn. Co., 129 Fed. 849; Schiller Piano Co. v. Illinois Northern Utilities Co., 11 A. L. R. 454; International and Great Northern Ry. Co. et al. v. Anderson County, City of Palestine, 62 L. Ed. (U. S.) 807; Cf. Patroin Place v. Topeka, 37 A. S. R. 312.

The development company contracts were made for the benefit of the public, and this furnishes an additional reason for holding that the same are enforceable in this proceeding. Mfg. Co. v. Mass. Bonding Co., 103 S. C. 55; Standard Oil Co. v. Powell Paving Co., 140 S. C. 39; Pool v. Water Co., 81 S. C. 438; State v. North Eastern R. R.

Co., 9 Rich. Law, 247; State of Washington, ex rel. Grisfeller v. Spokane St. Ry. Co., 41 L. R. A. 515; San Antonio Street R. Co. v. State, Elmendort, 38 S. W. 54; State ex rel. Bridgeton v. Bridgeton etc. 45 L. R. A. 837; 38 C. J. 805; 25 R. C. L. 205; 12 R. C. L. 221.

In addition to what has already been shown herein, we do not agree with the contention of the respondents as to heavy losses being inevitable to operate the street car system. In our opinion this contention has not been established. In a hearing before the R. R. Commission of S. C. in which proceeding the said Commission, after taking a lot of testimony and making a thorough investigation, issued an order requiring the corporate respondents to operate the street cars, the respondents failed to convince [fol. 282] the Commission that the system could not be operated except by an inevitable heavy loss. On the other hand, the S. C. Railway Commission reached the conclusion that the system could be made to yield a fair return if honestly operated in a business manner. In the order issued by the Commission the following significant statement was made by the Commission:

"We are of the opinion that by proper management it (the Electric street railway system) can be made to yield a fair return but certainly the suicidal policy it adopted estops it from asking relief upon the ground of unproductive operation." (S. C. Railroad Commission opinion July 28, 1927.)

The order issued by the South Carolina Railroad Commission must be presumed to have been based upon actual facts, knowledge acquired by an investigation conducted by the Commission and from evidence given at the hearing held, and this court should attach importance to the finding made by this Commission. In order to show the importance this court has in the past attached to findings of the S. C. Railroad Commission we quote from the case of Railroad Commission v. Railroad Co., 74 S. C. 80, as follows:

"The facts were determined by a tribunal well recognized and adopted throughout the land. The defendant was notified, appeared and contested the facts upon the merits.

"As the facts were judicially determined by a tribunal, empowered by statute to make such adjudication, they are not subject to review by this Court, in the absence of allegations charging fraud or other grounds for setting aside the adjudication."

Also see the following cases in this connection: R. R. Commission v. S. A. L. Ry. Co., 181 S. C. 144; R. R. Commission v. A. C. L. R. R., 71 S. C. 130.

It is the contention of petitioners that, the S. C. Railroad Commission having, after due hearings, found that the system could be made to "yield a fair return," and the respondents having failed to make application for a rehearing or to appeal as provided and required by the law of this State, the respondents cannot now be heard to question the ruling and order of the Commission, but are bound by the same. There is strength in this position, and the following cases seem to support the same: Prentis v. A. C. L. R. R. Co., 211 U. S. 210; 53 L. Ed. 150; Prendergast v. N. Y. Tel. Co., 262 U. S. 43, 67 L. Ed.; Columbia Railway, Gas and Electric Co. v. Blease et al., U. S. D. C. Eastern Dis. S. C. 1927.

In the last mentioned case, which was an action instituted by the respondents in District Court of the U. S. Eastern District of South Carolina, for the purpose of restraining the enforcement of the order of the S. C. Railroad Commission, in refusing to grant the injunction asked for, Judge Cochran based his order in part upon the ground that the company had not made an application for a rehearing as provided by the Act governing procedure before the R. R. Commission. On this question Judge Cochran stated:

"* * * I shall base my refusal to grant the restraining order in part upon the fact that the plaintiff has not made this application for rehearing to the Railroad Commission * * *."

Whether the contention of the petitioners as to the effect that should be given to the finding of the Railroad Commission and the failure to apply for a rehearing or appeal therefrom, is upheld by this court or not, great weight

should be given to the finding of the Commission, that the [fol. 283] electric street railway system could be made to yield a fair return if properly operated. As was stated by the court in the case of C. & N. W. Ry. Co. v. R. R. Commission of Wis., 145 N. W. 216, "Commission findings on cases of fact are prima facie correct and shall not be set aside unless clearly against the weight of evidence or without the jurisdiction of the Commission."

See also, Chicago Buss Co. v. Chicago Stage Company, 122 N. E. 477; N. & W. Ry. Co. v. Pub. Service Commission, 96 S. E. 62.

In this connection we call attention to the fact that in Report of the Referee he does not seem to have considered the evidence taken before the Commission, though he recommends the dismissal of the Commission's order.

It is contended by the petitioners that the real reason for the company's efforts to discontinue the electric railway operation is that the electric light and power departments are more profitable and less troublesome than the electric street railway, and further contended that because of this the company planned to put an end to the electric street railway business, and with this end in view purposely operated the electric street railway business in a manner to be able to show a heavy loss. In this connection petitioners call the court's attention to certain matters appearing in the record to which reference will be made.

In support of petitioners' contention that the electric street railway business can be operated successfully and with a reasonable profit, attention is called to the fact that in the year 1923 the operating revenue of that system was $955,734.00, against $249,252.00, operating expenses for the same year; that the operating revenue for the year 1924 for said system was $1,039,678.00, against $253,092 operating expenses for the same year. As admitted by petitioners, these figures do not take into account interest, taxes and depreciation, but even allowing for such fixed charges it is hard to conceive why the business cannot be operated without any great loss, even if it be conceded that a large profit cannot be made. Petitioners concede that a much larger profit would be realized by the Company by discontinuing the electric railway business and conducting only an electric light and power business, so as to be able

to sell all of the electric power produced for light and power purposes and thus be able to realize a larger profit and avoid the trouble of conducting the electric street railway business.

The respondents point to the street car strike of 1922 as a cause of the beginning of the alleged failure of the street car business, while, on the other hand, the petitioners contend that it was and is the duty of the company to so conduct and operate "its system as to keep and maintain the good will of the laboring people, who not only operate the system but very largely patronize it." In this connection attention is called to the case in re Loader, 35 N. Y. Supp. 996. In that case the court held that a public service corporation is under obligation to try to come to terms with its labor and to continue the operatin of its system. With this view we agree. It appears to us that even viewing the strike from the worst angle possible it must necessarily be regarded as a temporary condition and could evidently be removed in a short time by manifesting and exhibiting a reasonable and proper attitude to the employees of the company and to the general public. There is no proof disclosed by the record that this was done by the respondents in the case at bar, and the respondents therefore are not in a position to plead the strike in question to their advantage.

[fol. 284] Another contention of the petitioners, with which we agree, is that an "unjustified under-maintenance is partly responsible for the alleged losses" suffered by the Company in the operation of the said street car system. The evidence clearly shows that there was an under-maintenance of the street car system, and, in fact, this is frankly admitted by the respondents. From the testimony of Dr. J. C. Guilds, President of Columbia College, it is shown that the cars in use by the company were rough and regarded by Dr. Guilds as being altogether unsafe. From the testimony of Mr. J. H. Keisler, who had been a member of the Town Council of the Town of Arden, it clearly appears that the street car service had been poor for the past year, or two. Mr. Keisler stated in the course of his testimony that the cars in use were worn out, and ladies were afraid to ride on them. Mr. Spence, the company's superintendent, testified on this point as follows:

"Q. Your street cars, during the last few years of operation, were in pretty bad condition?

"A. They were.

"Q. Also, the tracks were in bad condition?

"A. Yes, sir; bad condition."

Also the testimony of Hoefer, a member of the Columbia City Council, testified that following the strike "the service of the car system was so poor that people would not ride in them (the cars). People would not ride street cars because the service was so poor; the schedule was knocked to pieces."

Mr. Hoefer, member Columbia City Council, also testified: "I don't think there is any doubt about it, I really think if they put a street car system in operation and put it under good management, they will make some money."

With this kind of service the company could not expect to make a profit, but failure was to be expected. In this connection attention is called to the fact that the corporation before the court is not an "ordinary private money-making corporation," but is a corporation of a "public service character."

As stated above, the respondents admit that the street car system has been under-maintained, and that the service has been poor, which fact is also fully established by testimony from many sources, but they contend that the under-maintenance and poor service has been unavoidable, contending that the earnings of the company did not warrant proper maintenance. In this connection it must be remembered that, under the facts of this case, as pointed out by the Referee and also shown herein, the two corporations, Broad River Power Company and the Columbia Railway, Gas and Electric Company, must be treated as one. Further, as has been shown in this opinion, the electric railway service is inseparably linked with the electric light and power and gas business. As to the contention of the respondents, that under-maintenance had been unavoidable because the earnings of the company did not warrant adequate maintenance, the same can not be sustained. It clearly appears all through the record that the combined business of the company has paid handsomely. Take for instance, the "consolidated income statement" shown in Mr. Barstow's letter of November 15, 1924, for the period

of time the Company claims to have suffered such disastrous losses on the street car business it is shown that the net earnings of the company were very good. It appears as follows:

December 31, 1922	$550,557.00
December 31, 1923	699,920.00
December 31, 1924	759,515.00

[fol. 285] As appears from the record of the case after paying all interest charges there was a balance left for dividends, depreciation etc. for three years the sums of $215,072.00; $364,403.00; and $418,751.00, respectively. It is also established by the record that in the year 1925 the company paid as a dividend on the common stock the sum of $9.00 per share, and in the year 1926, $6.25 per share on the common stock. In addition to this for each of the years last mentioned, 1925 and 1926, 7% was paid on the preferred stock. It is clear that the record does not support the contention of the respondents.

There is another feature of the case that should not be overlooked—the admitted purpose of the company to eliminate the electric street railway, "if it were possible to do so". This statement was made by Mr. J. P. Campbell, Treasurer of the Company, in his testimony. This admission having been made by one in a position to know and speak for the company, other facts in the case can more readily be understood. This was why, no doubt, all of the property mentioned above was transferred to the Broad River Power Company, having in mind eliminating the railway when it was learned that the railway could not be operated with anything like the amount of profit that could be derived from the sale of the electric power for light and power purposes, and thus avoid the inconvenience of operating the electric railway in question. This is the reason assigned by the petitioners for the action of the respondents, and the position finds support in the record.

By the testimony of Dr. Guilds, President of Columbia College, it is shown that the manager in charge of the street railway actually told the Doctor that the company did not want the Columbia College business. The company had been accustomed to carrying on the street cars from the College to the City of Columbia and return on each Sunday, for the purpose of the college girls attend-

ing church services in the city, as many as two hundred girls, in addition to the number that used the cars for transportation during the week. The company first increased the price without notice, from 14¢ to 20¢, and then informed Dr. Guilds that the company did not want the business at all.

It is also established by the testimony that the company intended to discontinue the operation of street cars in the fall of 1925. After making such statement the company encouraged the operation in the City of Columbia of a bus company and contributed $500.00 each month for the maintenance of the bus company. In all, the company contributed to the bus company as much as $1900.00 to keep the bus company operating. This act, is, of course, wholly inconsistent with a desire to get business for the company, respondent herein. We are not impressed with the reason assigned by the respondents for their acts. The bus company, aided materially by the respondents, sold tickets, in some instances for a lower rate than the street cars. This must have been done with the approval, if not under the instructions of the respondents, for the respondents aided materially in financing the bus company. The testimony of Mr. W. F. Cleveland, Mayor of Eau Claire, furnishes considerable light on this point, which was as follows:

"A. The busses, after they put busses on, they sold tickets for fifteen fares for a dollar, and the street car company sold ten tickets for a dollar, naturally the people, everybody in that section being working people, railroad people, automobile people, clerks, bank clerks, bookkeepers, and so forth, they just went right on the busses. Naturally that cut off the revenue from the street car because they sold fifteen tickets for a dollar and the street car sold only ten. They run the busses right ahead of the street car. When you would see a bus coming, you would know the street car was behind, but the bus was always in front. Of course, they got all the traffic."

[fol. 286] It is impossible to conceive of the respondents permitting this kind of conduct if it did not meet their approval, bearing in mind that respondents were putting up money for the bus company to carry on its business. Also, the testimony of Mr. Addison, a councilman of the

Town of Eau Claire, adds strength to what has already been stated on this line. On this point Mr. Addison testified:

"Mr. Woodring (Manager of the company) told me that he would be glad if we would let the busses come in. I was very much surprised. I though he would encourage me in my encouragement to him. When he said go ahead and let the busses come, I was surprised.

"Q. What did he tell you about competition being the life of trade?

"A. He said, if he was in my place, he would let them come. That competition was the life of trade."

In this connection we call attention to the fact, shown by the record in the case, that in showing the alleged loss sustained by the Columbia Railway, Gas and Electric Company the respondents made a charge against the Columbia Railway, Gas and Electric Company for power furnished by the Broad River Power Company, for the year 1926, for the sum of $27,504.60, and the record shows that in making this charge the rate was 26⅔% higher than that charged the Pacific Mills.

Such an attitude points to only one conclusion, that the respondents were formulating plans to quit operating their street car system, and did not protect the same. There is no wonder and no surprise that the gross income of the so-called "railway department" decreased with each passing year, and we cannot escape the conclusion, when the record is considered as a whole, that the respondents did not make a bona fide effort to make the street railway business a success. We, also find as a fact that the people of Columbia and the other places named in the petitions desired to patronize the street cars, and in our opinion if the street car system had been properly maintained, as it could and should have been, the same would have been patronized by the public generally. We find, further as a fact from the record of the case that a well-maintained electric street railway system is greatly needed by the public generally in the City of Columbia and the other places named in the several petitions in the case, and that the public has been greatly inconvenienced because of the company's failure to operate and maintain in good condition the said electric street railway system, and that the

public will continue to be greatly inconvenienced if the street car service is not restored as asked for in the petitions of the several petitioners. We also find as a fact, from the record of the case, that the said electric street railway system can be made to yield a fair return if properly managed and properly maintained.

We desire to state that in this opinion we have not undertaken to refer to all of the testimony in the case, because of the length of this opinion and, too, because we did not consider it necessary, but the same has been considered.

We do not agree with the Referee in holding that the Attorney General is not the proper party to institute the proceeding. In our opinion the authorities are opposed to the view expressed by the Referee.

"As the chief law officer of the State, he may, in the absence of some express legislative restriction, to the contrary, exercise all such *power* and *authority as public interests may, from time to time, require,* and may institute, conduct and maintain all such suits and *proceedings* as *he deems* necessary for *the enforcement of the laws of the State,* the *preservation of order,* and the *protection* of *public rights.*" 2 R. C. L. 917. (Italics added.)

[fol. 287] "Where the injury sought to be redressed is public in its nature, the Attorney General may institute proceedings in his own relation against a private corporation, even though the wrong complained of results in private as well as public harm." 2 R. C. L. 925.

See also the following authorities:

State v. Corbin, 16 S. C. 533; State v. Cunningham, 35 A. S. R. 27; 17 L. R. A. 145; 18 L. R. A. (U. S.) 672.

"* * * The general rule is that *mandamus will lie on the relation* of the Attorney General acting for and in the *name of the State,* or in some cases on the *relation of a municipality or a particular officer or board,* or of a *private individual,* to *compel* a *corporation* to perform a *specific legal duty which it owes to the public,* or to the *relator* as one *of the public,* unless some other adequate remedy is provided, or unless, as is the case in some jurisdictions, the wording of the statute regarding issuance of the writ is such

as to preclude its issuance against private corporations or their officers." 38 C. J. 803. (Italics added.)

See also Marian Electric Light Co. v. Rochester, 145 S. W. 977; State v. A. C. L. R. R. Co., 13 L. R. A. (U. S.) 320; 2 R. C. L. 927.

The rights of the intervening petitioners are, in our opinion, properly determinable in this proceeding. It is also our opinion that the Railroad Commissioner's order can not be disregarded.

The judgment of this Court is that the petition of the Attorney General and the petitions of the interveners be, and the same are hereby, granted, and the writ of mandamus issue as prayed for.

Watts, C. J., Blease and Stabler, J.J., concur. Cothran, J., dissents.

IN SUPREME COURT OF SOUTH CAROLINA

DISSENTING OPINION

COTHRAN, J. (dissenting):

This is a proceeding in the original jurisdiction of this court for a writ of mandamus, to require the respondents to resume and continue the operation of the electric street railway system in the City of Columbia, the operation of which has been discontinued since March 11, 1927.

The history of the litigation is succinctly stated in the report of the Special Referee, to whom all issues of law and fact were referred by an order of this court dated January 11, 1928.

After taking a mass of evidence the Special Referee filed an elaborate report, dated August 16, 1928, in which he rec- [fol. 288] ommended a dismissal of the main and intervening petitions. To this report both parties filed exceptions which fairly raise the questions hereinafter considered.

It appears to be a work of supererogation to attempt to add anything to the elaborate and conclusive report of the Special Referee, which has fully justified the confidence of the court in his industry, ability and discriminating judgment. But for the fact that the parties litigant are entitled

at least, to the assurance that the case has been most laboriously and carefully considered by the court, I would content myself with a formal order making the report the judgment of this court. It is a case of the greatest moment to all parties concerned, and has received the most patient and earnest consideration.

A brief chronology of the events connected with the charters and consolidation of the several corporations involved, is as follows:

In 1882, the Columbia Street Railway Company was chartered by Act of Assembly;

In 1887, the Congaree Gas and Electric Company was chartered;

In 1890 the Columbia Electric Street and Suburban Railway and Electric Power Company was chartered;

In 1891, an Act of Assembly authorized a consolidation of the Congaree Gas and Electric Company and the Columbia Electric Street and Suburban Railway and Electric Power Company, under the name of the Columbia Electric Street Railway, Light and Power Company, and the acquisition by such consolidated company, of the property and franchises of the Columbia Street Railway Company which would then enter into and be absorbed by the consolidated company.

In 1892, the consolidated company acquired the property and franchises of the Columbia Street Railway Company, and having perfected the consolidation permitted by the Act of 1891, became possessed of the property and franchises of these three corporations: (1) the original horse-car company of 1882, (2) the Gas and Electric Company of 1887, and (3) the Electric Street Railway and Power Company of 1890, with all of the privileges an obligations of the several constituent companies.

The duration of the charter of each of these companies, was 30 years, and that of the consolidated company, 50 years.

In 1892, the consolidated company obtained permission from the City Council by an ordinance, to change the motive power of the horse-car line to electricity, and to lay tracks upon other streets; under it the electric railway system was installed and operated.

In 1907, the Suburban Transit Company was chartered, and was authorized by City Council to lay tracks upon certain streets.

In 1911, the name of the consolidated company was changed to Columbia Railway, Gas and Electric Company.

In 1912 the consoliated company, under its new name, acquired the property and franchises of the Suburban Transit Company.

Later in the same year, 1912, the charter of the consolidated company was amended, under the general law, so as to continue in force in perpetuity.

[fol. 289] The consolidated company continued the maintenance and operation of the four branches of the business, the gas, electric lighting, electric power, and street cars, until 1924, when what is known as the Barstow interests, was introduced upon the scene.

At some time during the year 1924, the Barstow interests acquired all, or substantially all, of the capital stock of the consolidated company. (It will be noticed that whenever, in this opinion, the expression "consolidated company" is used, reference is to the Columbia Railway, Gas and Electric Company, referred to in the report of the Special Referee, as the Columbia Railway Company), which under the Act of 1891, was a consolidation of the Columbia Street Railway Company, the Congaree Gas and Electric Company, and the Columbia Electric Street and Suburban Railway and Electric Power Company.

After the acquisition by the Barstow interests of the capital stock of the consolidated company, they organized the Broad River Power Company, under a charter granted by the Secretary of State, with a capital stock, afterwards increased to $20,000,000. Common and preferred stock to the amount of (in round numbers) $8,000,000, was issued, and bonds to the amount of $13,000,000.

The general nature of the business proposed to be conducted by this corporation, included the building, constructing, acquiring by purchase, lease, consolidation, merger or otherwise, and operation, of street railways etc.

At that time it appears that the street railway system, owned and operated by the consolidated company, (along with its gas, electric, and power businesses), was being operated at a substantial loss.

I think that it may be read between the lines, and from subsequent developments, that the Broad River Power Company proposed to acquire all of the property of the consolidating companies in a way that would relieve them of the obligation to operate the losing proposition of the street railway system.

A very substantial asset of the consolidated company, was its interest in the Columbia Canal. Beginning prior to 1919, and continuing to 1923, there was a controversy between the State and the consolidated company, in reference to the respective rights and interests of the parties in the canal property, which resulted in an effort on the part of the State, to declare the rights of the consolidated company forfeited, as will appear by reference to the reported cases on appeal in 112 S. C. 528, 129 S. C. 68, 261 U. S. 236. This litigation eventuated in favor of the consolidated company, but it did not entirely compose the differences between the parties. It was of course of interest to the Broad River Power Company, that these differences be completely adjusted.

The General Assembly had created the Canal Commission, for the purpose of settling the controversy between the parties, and it was then functioning.

The Broad River Power Co., then interested in the double project of composing the differences between the consolidated company and the state, in reference to the canal, (in [fol. 290] part a source of their power supply), and in acquiring the propertes of the consolidating companies without the obligation to operate the street car system, entered into negotiations with the Canal Commission for the settlement of the canal controversy. They atttempted to combine the two projects referred to, by submitting drafts of two bills to be passed by the General Assembly: one a bill to settle the canal controversy, and the other a bill authorizing the consolidated company and six other corporations subsidiary to it, including the Columbia (Congaree?) Gas Light Company, to merge or consolidate with, or to sell, transfer and convey to any one or more of them, or to the Broad River Power Co., all or any part of their respective properties, assets, franchises, charter, or other rights etc.

The proposed bills however appear to have been acted

upon by the Canal Commission and by the General Assembly, independently of each other.

The business terms of the bill settling the canal controversy, were agreed to by the Canal Commission, a reference therein to the other bill having been struck out, and the bill became a law, 34 Stat. 852, approved March 24, 1925.

The members of the Commission, individually, recommended the passage of the other bill, which also became a law, 34 Stat. 842, approved March 19, 1925.

Purporting to proceed under the Act of March 19, 1925, referred to in the report of the Special Referee as "the merger or enabling Act", there was conveyed to the consolidated company all the properties of its subsidiaries, by deeds dated June 15, 1925, and on the same day the consolidated company, also purporting to act under the authority of the Act of March 19, 1925, executed a deed to Broad River Power Co., conveying all of the property theretofore owned by it, including that which it had acquired from its subsidiaries on that day, with the following reservations:

"Saving and excepting, and Columbia Railway, Gas & Electric Company expressly retains the following:

"(a) Its franchises to operate and maintain its street railway in the County of Richland, State of South Carolina within and without the City of Columbia and other municipal corporations in said County.

"(b) All easements, rights of way, rights and privileges necessary for operation of said street railway.

"(c) All street cars, tracks, ties, overhead conductors, brackets, spans, tools, repair equipment, material and supplies used or useful exclusively for street railway purposes.

"(d) All that lot or parcel * * *."

The deed also conveyed "all poles, including those used exclusively for street railway", the sub-station and the car barn, which had been used principally in connection with the street railway business.

[fol. 291] The relief prayed for by the petitioners is "double-barreled" in its nature: a writ of mandamus to compel the consolidated company to maintain and operate

the street car system, and a similar writ to compel the Broad River Power Co. to do the same thing.

I

The first enquiry is whether or not, under the circumstances, the consolidated company is under a legal obligation to maintain and operate the street car system, the Special Referee having found as a matter of fact, that the rehabilitation and operation of the system will result, (as its operation heretofore has resulted), in devastating loss.

The main reliance of the petitioners to sustain the affirmative of this enquiry, is the consolidating Act of 1891, by which the consolidated company acquired all of the property rights and franchises, with all of the privileges and obligations, of the constituent consolidating companies, one of which was the corporation authorized to maintain and operate the street car system, the Columbia Electric Street and Suburban Railway and Electric Power Company.

The enquiry naturally arises then, as a ligament which would bind the consolidated company to the obligation to operate the street car system, whether the corporation thus acquired through the consolidation Act of 1891, by the consolidated company, was under a legal obligation to do so, regardless of the devastating loss that such maintenance and operation would entail; for if such constituent element in the consolidation was not under such obligation, and the consolidated company acquired the property, franchises and privileges, subject to its obligations, of the constituent corporation, it would appear illogical and unjust, in the absence of an express undertaking, to impose upon the consolidated company an obligation which the constituent corporation had not assumed, or which had not been imposed upon it.

I think that it is clear, from the authorities, that under the consolidation Act of 1891, the consolidated company acquired, no more and no less, the property, franchises, privileges and obligations of each of the constituent corporations.

In the case of R. Co. v. Maryland, 10 How. (U. S.) 376, the effort was to relieve one of the consolidating com-

panies from certain taxes which it was liable for, prior to the consolidation. The court said:

"And the law which authorizes these two companies to unite themselves with the plaintiff in error, declares that this new corporation * * * shall be entitled within this state to all the powers and privileges and advantages at that time belonging to these two companies. It grants it nothing more. Now, as these companies held their corporate privileges under different charters, the evident meaning of this provision is, that whatever privileges and advantages either of them possessed should in like manner be held and possessed by the new company, to the extent of the road they had respectively occupied before the union; that it should stand in their place, and possess the power, rights and privileges they had severally enjoyed in the portions of the road which had previously belonged to them. And this intention is made still more evident by the fourth section of the law which makes the new corporation responsible for the contracts, debts, obligations, enjoyments and liabilities at law or in equity of the several [fol. 292] companies. * * * The plaintiff in error therefore took the property of the * * * company with all the liabilities to which it was subject in the hands of that company."

The case of Tomlinson v. Branch, 15 Wall. 400, is of interest from its familiar local coloring as well as from the legal principles announced. The South Carolina Canal and Railroad Company was chartered in 1827. It constructed a railroad from Charleston to Hamburg via Branchville, which was completed in 1833. Its charter gave it an exemption from all taxes for a period of 36 years. This period expired in 1869. In the meantime, in 1835 the railroad company, the predecessor of what was afterwards known as the South Carolina Railroad Company, was chartered. It was given a perpetual exemption from all taxes. By the charter it was authorized to construct a railroad from Charleston through the States of Kentucky, Tennessee, North Carolina and South Carolina, the objective being a connection with the west at Cincinnati and the sea at Charleston. In substantially the lan-

guage of the late Judge Memminger, the conduct of the war did not keep pace with the grandiloquence of the manifesto, for the construction extended only from Branchville to Columbia, with a branch about midway, to Camden. By reason of the exclusive privileges granted to the Hamburg line, the South Carolina Railroad Company met with difficulty in entering Charleston, and after negotiations between the two companies, an agreement was entered into by which the Hamburg line was merged into the other. In 1843 this amalgamation was legally authorized by an Act of the General Assembly, which provided that all of the rights, privileges and property belonging to the Hamburg, line should be vested in the South Carolina Railroad Company which should be liable for all the debts and contracts of the other line.

After the expiration of the exemption from taxes of the Hamburg line, which occurred as stated in 1869, the stockholders of the South Carolina Railroad Company filed a bill in equity in the court below against the said company, as also against one Tomlinson, State Auditor, and certain County collectors, to enjoin the company from paying, and the others from collecting, certain taxes imposed upon the company in pursuance of the Acts of the legislature of South Carolina; it being alleged in the bill that the said company was by charter exempt from taxation and that no adequate legal remedy existed under the laws of the State to obtain redress; the stockholders contending that by the merger of the South Carolina Canal and Railroad Company in the South Carolina Railroad Company, the property of the former is held by the latter, with all the rights and privileges of its own charter attaching thereto, including the right of perpetual exemption from taxation.

The Circuit Court sustained the contention of the South Carolina Railroad Company, in reference to the tax exemption of both companies; but upon appeal to the U. S. Supreme Court, the claim of exemption upon the property of the South Carolina Railroad Company, not acquired from the Hamburg line, was disallowed; upon the other property the claim was allowed.

In reference to the succession of the South Carolina Railroad Company, to the rights and privileges of the Hamburg line, the court said:

"The keeping alive of the rights and privileges of the old company, and transferring them to the new company in connection with the property indicates the legislative intent that such property was to be holden in the same manner and subject to the same rights as before. The owners of the property were to lose no rights by the transfer, nor was the public to lose any rights thereby * * * but all [fol. 293] its rights and duties its provisions and obligations, as related to the public or to third persons, remain and devolve upon the new company."

In the case of R. Co. v. Blake, 9 Rich. 231, the court said:

"The South Carolina Railroad Company by an act of 1843 (11 Stat. 273) has all the rights and privileges which belong to either the South Carolina Canal and Railroad Company under its charter of 1828. (8th Stat. 355) or to the Louisville, Cincinnati and Charleston Railroad Company under its charter of 1835, (8th Stat. 409)."

In the case of Delaware State Tax, 18 Wall. 206, the court said:

"The purpose of the two provisions was to vest in the new company the rights and privileges which the original companies had previously possessed under their separate charters; * * *

"* * * 'consolidation' is not sale; when two companies are authorized to consolidate their roads, it is to be presumed that the franchises and privileges of each continue to exist in respect to the several roads so consolidated."

Green v. Conness, 109 U. S. 104.

"It will be observed that a consolidated company formed under this Act acquires all the rights, privileges and franchises possessed by its constituent companies."

New Orleans Co. v. Louisiana Co., 115 U. S. 650.

In Punxsutawny v. Gas Co. (Pa.), 85 At. 1003, the court said:

"The corporation merger and consolidation act * * * provides in section 3 that the new corporation shall be

possessed of 'all the rights, privileges and franchises' theretofore vested in each of its constituent corporations, and that 'all debts, duties and liabilities of each of said constituent corporations shall thenceforth attach to the new corporation.' As said by the learned Court below: 'The weight of the authorities seems to be that when the act of consolidation gives to the consolidated company the rights and privileges of the constituent companies or makes the consolidated company subject to the obligations of the constituent companies, the rights and obligations are not extended by the act to all of the property of the consolidated company, but only apply severally to the property of each constituent company taken over by the consolidated company.' " Citing many authorities.

Now then, as to the relation of the constituent corporation, the Columbia Electric Street and Suburban Railway and Electric Power Company, in reference to its legal obligation to operate the system:

The charter Act of 1890 conferred on that company au- [fol. 294] thority to construct and operate an electric line of street railway in the City of Columbia, with the consent of the City Council, and to extend the same five miles into the country from the State Capitol. What the Special Referee stated in reference to the charter of the consolidated company is equally true of the charter of this constituent corporation:

"The franchise obtained from the State and confirmed by the City having been *received and acted* upon by the railway company, reciprocal obligations necessarily arose. In other words, a *contract* was thereby created. This proposition rightly understood seems to be indisputable. The railway company having thus undertaken to serve the public, under the authority so granted by the public through their agencies, thereby assumed an obligation which could not be thrown off at will. Harmon v. Columbia & Greenville Railroad Co., 28 S. C. 401; Moore v. Railroad Co., 38 S. C. 24; 14 C. J. 161-162.

"The real question in this connection is not whether there was a contract, but the nature of the contract and the extent of the obligations thereby imposed. If the

ordinances adopted by the city contained nothing whatever except permission to lay the tracks in the streets and operate the railway, as soon as this permission was acted upon, that is to say, *accepted*, the obligation to exercise the franchise and perform the service came into existence. This, however, would not create a contract to continue the operation of the railway indefinitely or in perpetuity without regard to whether or not reasonable compensation was afforded for the services rendered. A contract resulting in an obligation so onerous as this could not be thus *implied*. The decisions of the Supreme Court of the United States are clear beyond all doubt that such a contract cannot be elicited from the acceptance of a charter from the State for the operation of a railroad, even where the drastic power of eminent domain has actually been exercised. It follows with equal force that such a contract cannot be elicited from the fact that the consent of the city was sought and obtained as required by the charter."

In support of this proposition the Referee quotes at length from the cases of R. R. Com. v. R. Co., 264 U. S. 79, and Bullocks v. R. Co., 254 U. S. 563, which are quite apposite; the quotations need not be repeated here as the report will be incorporated in the report of the case.

It has been shown I think that so far as the charter is concerned the right to exercise the franchise is permissive only, and contains nothing of so binding an obligation as to require the operation of the system at a distinct loss. The reasoning and conclusion of the Referee that there is nothing in the ordinances of the city of like character, are satisfactory to me.

There being no express contract in either the statute or ordinance, the rule established by innumerable cases is that the continued operation of a railroad or street car system at a loss cannot be required.

In the case of Charleston-Isle of Palms Co. v. Shealy (D. C.), 266 Fed. 406 (cited by the Referee) upon an application by the plaintiff for leave to abandon an unremunerative enterprise, his honor Judge H. A. M. Smith, in a decree [fol. 295] granting that relief, said:

"As therefore the evidence is that this property can only be operated so as to perform the duties imposed upon the

complainant by its charter, at a continuing loss, there is no power in the public, under the state of facts existing in this cause, to compel it. The corporation is authorized to abandon and return to the State its charter, franchises and privileges, and to cease operations, to liquidate by realizing upon what property it may possess, (excluding its franchises and public privileges), and pay the proceeds to the parties entitled to receive the same."

In the case of So. Bell Co. v. R. R. Com. (D. C.), 280 Fed. 902, also cited by the Referee, the court said:

"The State, acting for the public, has no right to compel a corporation to render its services free, nor to exhaust its capital in performing work for the benefit of the public. A corporation has the right, if it finds it unremunerative, unless bound to the contrary by a contract, to cease operating and stop its work."

"The power of a legislature to compel continuity in a business can only arise where the obligation of continued service by the owner and its employees is direct, and is assumed when the business is entered upon. A common carrier which accepts a railroad franchise is not free to withdraw the use of that which it has granted to the public. It is true that, if operation is impossible without continuous loss, (Brooks-Scanlon Co. v. Railroad Commission, 251 U. S. 396; 64 L. ed. 323; Bullock v. Florida, 254 U. S. 513; 65 L. ed. 380, it may give up its franchise and enterprise; but short of this it musa continue."

Wolff v. Court, 262 U. S. 522.

In Pittsburg Co. v. R. Co. (D. C.) 289 Fed. 133, the question at issue was the power of the federal court to authorize a receiver to abandon part of an intrastate railroad. It was held that the court had no such power. In passing the court said:

"Little question is raised but that the owners of a railroad may abandon the entire road, if it cannot be operated without continuous loss, and there is no reasonable prospect of profitable operation in the future." Citing Brooks-Scanlon v. R. R. Com., 251 U. S. 396, and Bullock v. R. R. Com., 254 U. S. 513.

In Fort Smith Co. v. Bourland, 267 U. S. 330, the court in denying the right to abandon part of a line of street railway, said:

"So far as appears, this company is at liberty to surrender its franchise and discontinue operations throughout the city. It cannot, in the absence of contract, be compelled to continue to operate its system at a loss. But the constitution does not confer upon the company the right to continue to enjoy the franchise and escape from the burdens incident to its use." Citing the Brooks-Scanlon case.

[fol. 296] Hence we conclude that the constituent corporation had the privilege of abandoning its franchise at any moment when the maintenance and operation of the street car system should become disastrously unremunerative.

It follows that when by the consolidation the consolidated company acquired the same rights and was charged with the same obligations as the constituent corporation, it assumed no higher or more onerous obligations than had been imposed upon that corporation; and that it had the same right of abandonment.

This is not at all inconsistent with the unanimous holdings of the court that where the corporation retains its franchise and continues to operate under it, it cannot abandon the unprofitable features of the enterprise while retaining the profitable.

"But where a duty which a corporation is obliged to render is a necessary consequence of the acceptance *and continued enjoyment of its corporate* rights, those rights not having been surrendered by the corporation, other considerations are in the nature of things paramount, since it cannot be said that an order compelling the performance of such a duty at a pecuniary loss is unreasonable."

Mo. P. R. Co. v. Kansas, 216 U. S. 262.

"To conclude to the contrary would be but to declare that a corporate charter was partly unilateral, that is, was binding in favor of the corporation as to all rights conferred upon it and was devoid of obligation as to duties imposed, even altho such duties were the absolute correlative of the rights conferred. Was the duty which the order

here commanded one which the corporation was under the absolute obligation to perform as the result of the acceptance of the charter to operate the road, is then the question to be considered."

M. P. R. Co. v. Kansas, 216 U. S. 262.

"It may not be doubted that the road, by virtue of the charter under which the branch was built, was obliged to carry passengers and freight, and therefore as long *as it enjoyed its charter rights* was under the inherent obligation to afford a service for the carrying of passengers. * * * *Testing the alleged unreasonableness of the order in the light of the inherent duty resting upon the corporation* etc. * * *"

M. P. R. Co. v. Kansas, 216 U. S. 262.

But it is contended that when the consolidated company accepted the terms of the consolidation Act, applied to the City for permission to lay its tracks upon the streets and to operate a street car system, and actually maintained and operated it, there was created a binding obligation to continue such operation at any and all cost, though it in time would swallow up the property devoted to the operation of the street railway system and also that of the allied enterprises.

[fol. 297] I think that what has been held in reference to the obligation of the particular constituent corporation to operate the system, to its right to abandon it when unremunerative, and to the succession of the consolidated company to that right, is a sufficient answer to the contention of the petitioners.

I also approve of the reasoning and conclusion of the Referee to the effect that the fact of loss does not relieve the grantee of a franchise from the obligation it imposes, so long as he continues to hold it; but that for the reasons stated, the principle is inapplicable to the conditions presented in the case at bar.

II

The second enquiry is whether or not, under the circumstances, the Broad River Power Co. is under a legal obligation to maintain and operate the street car system, re-

gardless of the fact that its rehabilitation, maintenance and operation would entail devastating losses.

There is less ground for maintaining an application for mandamus against this company than against the consolidated company.

If the consolidated company could not under the circumstances be compelled to operate the system at a loss, and the Broad River Power Co. had acquired all of the franchises, rights and privileges of the consolidated company, it stands to reason that it would have succeeded to the right and privilege of the consolidated company to abandon the operation, under the circumstances. That it seems to me would be a sufficient reason to refuse the mandamus. But there are others:

The Broad River Power Co. has other branches of its business besides the street car system: the gas business, the electric light business and the electric power business; to require it to rehabilitate, maintain and operate the street car system at the stupendous loss apparent, the losses would have to be made up out of the net income of the other departments, and it would be but a matter of time until the entire property of the street car system, and the net income from the other departments would be swallowed up in "that Serbonian Bog where armies whole have sunk".

In the incomes of those departments, the patrons of them severally have a direct interest, not only that they be maintained at efficiency, but that the rates may not be unreasonably increased, both of which will necessarily be affected by such withdrawals and diversions.

In addition to this, the conveyance of the property of the consolidated company to the Broad River Power Co., specifically excepted the acquisition of the franchise of the street car corporation, the matrix of any duty to operate.

The disposition by the Special Referee of the intervening petitions should be affirmed by this court.

I think the judgment of this court should be that the report of the Special Referee in all respects be confirmed, and that the main and intervening petitions be dismissed.

[fol. 298] IN SUPREME COURT OF SOUTH CAROLINA

[Title omitted]

PETITION FOR REHEARING AND ORDER DISCUSSING SAME—
Filed Sept. 25, 1929

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of South Carolina:

Your petitioners, the respondents in the above entitled cause, respectfully petition that a rehearing be granted them in this case, and set forth the following as the particular points that have been misapprehended by the Court:

1. That the decision of the Court that the Act of 1891 (Acts 1891, page 1453) consolidating Columbia Electric Street and Suburban Railway and Electric Power Company and Congaree Gas and Electric Company created a franchise for "Electric Street Railway, Light and Power services" was based on a mistake as to the provisions of the statute. The Court quotes (p. 24, mimeographed opinion) what it evidently considers to be the provisions of the Act of 1891 ("So much of the Act under consideration pertinent to the questions involved is as follows"), when in fact the statute does not contain the provision set forth. This error is caused by the adoption by the Court of the statement contained in the brief of petitioners (p. 7), the Court failing to note that it is pointed out in the respondents' reply brief (p. 33) that the petitioners do not correctly set out the statute.

[fol. 299] When the exact provisions of the Act of 1891 are considered it is evident that in this case there is no combined franchise for street railway and power purposes, and the cases cited in respondents' brief (pp. 25, 26) apply. The Spartanburg case (130 S. C. 125), on which the Court relies, therefore has no application to the case at bar. It was undisputed in the case at bar that there was no ordinance of the City of Columbia granting permission to use its streets for electric or gas purposes.

2. That the Court misapprehended the evidence as to losses incurred in operating the street railway, and the possibility of operating except at a loss. The Court in its opinion (Opinion, p. 42) sets forth what it evidently conceives to be the receipts and disbursements of the railway for 1923 and 1924, showing a profit for both years. The figures quoted by the Court are taken from the petitioner's brief (pp. 126, 127) and are there stated to be earnings of "so called Electric Department," and not of "the electric street railway business," as stated by the Court. As pointed out in the respondents' brief (p. 5), the respondents went back to 1920 in their evidence (which was considered sufficient to show the future probabilities), and the undisputed evidence was that in all these years the operating expenses exceeded the receipts of the railway. As found by the Referee, even if nothing were charged the railway for power there would still have been a loss in every year except 1920 and 1921. It is apparent that but for the mistake which the Court made in treating electric earnings to mean street railway earnings, as above pointed out, it would have reached a different conclusion on this branch of the case. It is also apparent that the Court's statement that "A much larger profit would be realized by the company discontinuing the electric railway business and conducting only an electric light and power business" (Opinion, p. 42) cannot be reconciled with its conclusion that a profit can be made out of the railway business. If this were true, certainly deducting the profits [fol. 300] which could be so made would not increase but would decrease the total profits. On this branch of the case the statements of the Court as to the effect of the strike of 1922 (p. 42) and the alleged failure of the company properly to handle the same are based on the mere arguments of petitioners, and are without any evidence to support the same, as no testimony was taken on this subject.

3. That there is absolutely no evidence in the case on which the Court can base the conclusion "that the said electric street railway system can be made to yield a fair return if properly managed and properly maintained" (p. 45). The undisputed evidence showed continued increas-

ing losses over a period of seven years. During all this period the superintendent of the railway and the actual operating forces were the same as had run the railway for years. They were experienced railway men. There was no fact in evidence showing that it could be operated at a profit, or possibly break even, and no qualified witness—or unqualified witness, for that matter—gave an opinion and stood by it that the railway could be operated except at a loss.

4. That the Court failed to distinguish between the duty to operate a street railway and the duty to operate at a loss. The learned Referee correctly set forth this distinction, and his conclusion that under the ordinances in question in this case there was no contract to operate at a loss is unassailable under the decisions.

(See Respondents' Brief, p. 7 et seq.)

In the consideration of this question the Court fell into a second error in failing to note that there was no combined franchise, by ordinance or otherwise, for street railway, gas and electric service, as was the case in the decision in the Spartanburg case (130 S. C. 126).

5. That the Court entirely misapprehended the provisions of the private contracts involved.

The Court quite evidently thought (Opinion, p. 39) that [fol. 301] the deed to the Shandon line contained a provision for operation for ninety-nine years, whereas, in fact, there was no such provision in the deed, and the lease which was previously entered into (containing an option to purchase) was merged in the deed. (See Respondents' Brief, p. 63.) The Court also states in its opinion that the Colonial Heights line was built under a contract guaranteeing electric railway transportation to be furnished not later than a year from the date of the contract or contracts (p. 40). The contracts referred to were not contracts to which the railway company was a party, but were between a land company selling lots and the purchasers thereof. Aside from these misapprehensions of the facts, the Court apparently adopted as correct the statements of petitioners (Petitioner's Brief, p. 110 et seq.) as to the effect of certain decisions cited as supporting the proposition that mandamus will lie to enforce some private contracts, with-

out noting that these cases do not hold as stated. (See Respondents' Reply Brief, p. 14 et seq.) A re-examination of these decisions will convince the Court of its error in deciding this phase of the question. (See also Respondents' Brief, p. 91 et seq.)

Furthermore, aside from the error of the Court as to mandamus being a remedy for the enforcement of private contracts, it is unquestionably the law, as laid down in all the decisions, including decisions of this Court, that these contracts do not inure to the benefit of any third persons, as members of the public or otherwise, and the Court was clearly in error in holding otherwise, and the decisions cited by the Court do not sustain its conclusion. (See Respondents' Brief, p. 68 et seq.)

6. That the Court fell into error in determining the weight to be given the decision of the Railroad Commission (p. 41). The Court cited to support the apparent conclusion that the order of the commission was conclusive. Prendergast v. N. Y. Tel. Co., 262 U. S. 43. In fact it was there held that on an issue of confiscation the find-[fol. 302] ings of a public service commission are of no force. This rule was enforced by this Court in Railroad Co. v. Charleston & W. C. R. Co., 144 S. E. 233. Even if such were not the case, there was not one iota of evidence before the commission in this case that operation could be had except at a loss, and in fact the same commission had previously so held. (See Respondents' Reply Brief, p. 17.)

7. That the Court entirely misapprehended the evidence as to physical facts, which resulted in its erroneous conclusion that the electric and street railway constituted physically an inseparable system. (Opinion, p. 28.) The evidence showed that joint pole agreements between railway and electric companies were a usual thing, to avoid duplication of facilities in public streets, and that it was not unusual for a street railway to purchase all its power from an electric company. The evidence showed that such systems were not, therefore, physically inseparable, and the Court was in error in holding that "the railway service cannot be carried on in the community in question without the use of the property which is now being used and operated for electric light and power purposes."

8. That the Court fell into error in holding that "the patrons of the electric railway have contributed to the electric light and power" (p. 32). The Court apparently considers that the electric property was paid for out of the "profits" of the railway. This holding is impossible under the evidence in this case, for there is not a scintilla of evidence that the railway ever made any profit which was used for building up the electric business.

9. That the Court misapprehended the evidence as to the consideration paid by Broad River Power Company for the electric and gas property. The Court states in its opinion that Mr. Campbell testified that the consideration was the surrender of stock "worth as he said one dollar." There was absolutely no such testimony. As shown by respond- [fol. 303] ents' brief, the consideration was Ten Million One Hundred and Seventy-five Thousand Five Hundred and Eleven Dollars ($10,175,511.00) as testified to by Mr. Campbell, and the stock which the Court refers to was valued at Three Million One Hundred and Twenty-two Thousand Three Hundred Dollars ($3,122,300.00) and was only part of the consideration (p. 35).

10. That the Court fell into error in quoting the evidence of Mr. J. P. Campbell as to the intention of the Barstow interests to abandon the street railway (p. 44). The Court adopts verbatim the statement contained on page 130 of Petitioner's Brief, taking no note of the statement on page 35 of Respondents' Reply Brief that absolutely no such testimony as quoted was given. An examination of the record will demonstrate that respondents correctly quote the evidence, and that what the Court sets out as evidence is merely the misstatement of counsel for petitioners.

11. That the Court was in error in holding that the Attorney General could maintain this proceeding. When the Court re-examines the question raised in paragraph one above and corrects its misapprehension as to the terms of the Consolidation Statute, the sole basis of the Attorney General's petition will be removed, and it will be thereupon apparent that the Referee was correct in his conclusion that the Attorney General could not maintain this proceeding. (See Referee's Report and Respondents' Brief, p. 97 et seq.)

12. That the decision of the Court, requiring operation of the street railway in Columbia and vicinity, takes the property of these respondents without due process of law, and denies to them the equal protection of the law, in violation of the Fourteenth Amendment to the Constitution of the United States.

Wherefore your petitioners pray that a rehearing be granted them in this cause, and that, pending the same, the further operation, execution and enforcement of the decision, judgment or decree of this Court, and all further [fols. 304-307] proceedings therein be stayed for all purposes.

And your petitioners will ever pray.

Geo. M. Le Pine, W. C. McLain, J. B. S. Lyles, Attorneys for Broad River Power Company, Columbia Railway, Gas and Electric Company, and F. D. Campbell.

Columbia, S. C., July 17, 1929.

Certificate

I hereby certify that I am an attorney and counsellor at law, duly admitted to practice before the Supreme Court of South Carolina; that I have read the above and foregoing petition and carefully considered the grounds thereof, and that there is merit in such grounds; and, further, that I am in no wise concerned in the case or the result thereof.

Paul D. Cooper.

Columbia, S. C., July 17, 1929.

Consent

The undersigned parties consent that the status of any property involved in this case shall not be disturbed until after the final determination of the case.

Broad River Power Company, by J. W. Weisel, Jr., Its Assistant Treasurer. Columbia Railway, Gas and Electric Company, by F. D. Campbell, Its President. F. D. Campbell.

Columbia, S. C., July 17, 1929.

[Endorsed:] Petition dismissed. R. C. Watts, C. J., Eugene S. Blease, A. J., John G. Stabler, A. J., Jesse F. Carter, A. J. I dissent: T. P. Cothran, A. J. Supreme Court of South Carolina, Clerk's Office, Columbia, S. C. Filed Sept. 25, 1929. J. B. Westbrook, Clerk.

[fol. 308] In Supreme Court of South Carolina

In re ex Parte: State of South Carolina ex Rel. John M. Daniel, Attorney General, Petitioner,

vs.

Broad River Power Company, Columbia Railway, Gas & Electric Company and F. D. Campbell, Respondents; ex Parte: Town of Arden, The City of Columbia, et al., Intervening Petitioners

Statement of Evidence Before Referee

Pursuant to the Order of Reference, heretofore made by The Supreme Court in this case, appointing Honorable L. D. Lide, Esq., of Marion, S. C., Special Referee to take the testimony and report his conclusions thereon, and pursuant to notice of the Referee, a reference was held on Wednesday, February 29th, 1928, in the Supreme Court Rooms, in Columbia, S. C., to begin the taking of the testimony.

The following are the

Appearances of Counsel

J. E. Belser, Esq., H. N. Edmunds, Esq., Nelson & Mullins, Esqs., for petitioners.

[fol. 309] J. B. S. Lyles, Esq., Elliott & McLain, Esqs., of Columbia, S. C.; George L. Le Pine, of New York, N. Y., for respondents.

Colloquy Between Referee and Counsel

Mr. Lyles: We wish to call up at this time the protest that we filed with the Court and submitted to the Referee. We take the position that the case is not at issue and that

the reference should not proceed until the respondents have had time within which to prepare their case, under the petitions as amended and construed by the Order of the Supreme Court, and to prepare and file their pleadings to such petitions as so amended and construed.

If the Court Pleases, I feel that it is my duty and necessary, in order to protect the rights of my clients, to present the various matters that I expect to present to the Referee. I wish the Referee to understand in the first instance that I do so with the highest personal regard and respect to the Referee and that I look on the matter purely as a legal proposition. In the second place, I wish to present all of the matters fully, because the case, I frankly say, is one of serious consequence to the clients I represent. I hope not to take unnecessary time in so doing. I presume that the Referee has read the protests that we filed, and it will not be necessary to take time to read them at this time.

If Your Honor Pleases, I think that the amendment and construction of the pleadings, made by the Order of the Supreme Court, raises four (4) new questions, as best I can summarize them in the somewhat limited time that we have had to consider the situation. We feel that these new [fol. 310] questions should require a revision of the pleadings that we have already filed—rather not, should require, but do require a revision of the pleadings we have already filed in this matter, and that they will necessarily involve the production by the defendant of additional evidence to that which we would have been required, under the pleadings as originally filed by the respondents, to produce. The new questions as I see them at this time that have been introduced are:

1st. Whether the Broad River Power Company can be required by mandamus to construct and operate a new or definite stree- car system, when such company has never profesed or undertaken so to do?

The same question would apply with reference to the respondent Campbell.

2nd. Whether the Broad River Power Company, or the Respondent Campbell, can be required by mandamus to construct and operate a new street car system, when neither

one has any franchise from the municipalities and the County of Richland, through which governmental subdivisions the new system necessarily, we suppose, would be constructed and operated?

3rd. Whether either of the Respondents could be required by mandamus, in the face of the constitutional provisions of both state and federal constitutions, to construct and operate a new street car system, when the respondents would necessarily allege and undertake to prove that this could be done only at a loss? Incidental to that is the question as to whether a writ of mandamus, under the circumstances, would not add additional obligations to the charter of the Broad River Power Company which do not exist and are not now imposed by such charter, so that the mandamus [fol. 311] or the order would be an impairment of the obligations of such contract, within the inhibition of both the state and federal constitutions.

4th. The fourth and last new question would be whether the allegations of the petitions as amended and construed are sufficiently definite to afford a basis for the writ of mandamus? That is, whether there are any such definite specifications or allegations of fact contained in the petitions, as amended and construed, that would, under the ordinary rules governing it, create a specific duty under the established rules authorizing, or allowing, or permitting the issuance of a writ of mandamus?

May it Please the Court, we think that the mere statement of that situation, making these questions apparent within themselves and that the questions not only involve additional que-tions of law, but also additional questions of fact, that, under the established rules in this state (and in fact we may say further under the constitutional provisions guaranteeing sufficient notice and opportunity to prepare defenses and pleadings and collect the evidence) we are not only entitled under the constitutional provision to the time, but, in addition to that, that we are so entitled under the established practice of this Court and under the Order of the Court itself.

Now my colleague, Mr. McLain, has prepared himself on the point of "practice involved" under the decisions of this Court, and he will now address you.

Mr. McLain: (Passes up copy of memorandum of authorities, etc., to the Court, and then makes oral argument on the point.)

[fol. 312] Mr. Lyles: By reason of the stay order of the Federal Court, prohibiting these parties from further proceedings that would in any way effect the property or street railway system of the Bankrupt Company, that that necessarily brings in the new questions that I have specified, which must be met as legal questions and as questions of fact before there could be any decision.

Mr. Belser: (Argument in reply.)

Mr. Edmunds: (Argument.)

Mr. Lyles: (Argument.)

The Court: I have given some consideration to this matter since the notice was filed with me. I have made no examination of the authorities. However, I have given some reflection to it, and my view of the matter is that the Order of the Supreme Court is simply to the effect that the case proceed against these respondents and not against the Railway Company, or its property, and that these are the only allegations of the petition which have been amended. The points suggested by Mr. Lyles in his argument are interesting, but, as I see it, they go to the merits of the case, and they will be given due consideration under the evidence that may be offered. In other words, waiving all other matters, I do not see where the respondents will be prejudiced by requiring the case to proceed under the pleadings already filed. I am, therefore, of opinion that the case shall proceed.

Mr. McLain: We wish now to present a motion, which was duly served on the attorneys for petitioners, and which I will now pass up, to dismiss these petitions as to Columbia Railway, Gas & Electric Company. I do not suppose there will be any objection on the part of the petitioners [fol. 313] to that motion in view of the stand which they have taken here, which they took before the Supreme Court and which they took before Judge Cochran in the Federal Court.

Mr. Belser: We certainly object to that. We think the proceedings are suspended, and that is all.

The Court: Let me ask you a question, Mr. McLain. Would I, as Referee, have the right to pass such an order?

Mr. McLain: Yes, sir; I have a brief on the question.

The Court: What I had in mind, in view of the last order of the Supreme Court construing these pleadings and continuing this case against Broad River Power Company and Mr. Campbell, is whether or not I had anything to do with reference to the Railway Company.

Mr. McLain: They are still in the case, as far as the record goes.

Mr. Belser: We are not asking for any relief at this stage of the case against the Railway, Gas & Electric Co

The Court: I will consider this matter further. I do not think it is necessary to be decided at this moment.

Mr. Lyles: I assume that, under our practice, it is not necessary to except to the rulings of the Referee?

The Court: Oh! No. I will see that you are fully protected on that.

Mr. Lyles: We have endeavored to—we want to ask leave of the Court to make a motion to file some additional pleadings to cover this situation. We have done the best we could to prepare a demurrer and amended return, I suppose you would call it, covering the new questions raised, and we move the Court to allow us to file these. I will state that we have exercised all possible diligence in preparing these, and that the same were not completed in substance [fol. 314] or in form until late yesterday afternoon, so it has been impossible for us to do otherwise than what we have done. (Passes up written motion to the Court.) I hardly think it is necessary to argue that, Your Honor. The motion is just a formal reiteration of our objection. In order to cover the situation and protect the situation, we think we should be allowed to file the amended petition or pleadings to cover the new questions. It seems to me, as a matter of right and discretion, that we should be allowed to put our new questions of law and fact into proper and legal status.

Mr. Belser: We object to the filing of any additional pleadings or demurrers.

Mr. Lyles (handing copy of papers to Mr. Belser): It was impossible for us to get them ready before six o'clock yesterday afternoon.

Mr. Belser (after reading motion papers): That has all been submitted to the Court before, and I do not think any purpose can be served by them.

The Court: In my discretion, I am going to permit the Respondents to file the additional return and answer. I do not think they have any right to demur at this time.

Mr. Lyles: We would like, if Your Honor will not permit the filing of the additional demurrer or new demurrer, we would like to call up and argue the original demurrer, as we assume that the original pleadings stand to the pleadings as amended and construed by the Supreme Court, and we suppose it is perfectly apparent that the Supreme Court wanted you to pass on these demurrers, and so we would like to call that up and argue it.

Mr. Edmunds: (Argument.)

The Court: Suppose that your view of it be correct, Mr. [fol. 315] Edmunds, and the Referee does not consider the demurrers at all—have the demurrers been passed upon by the Supreme Court at any time? Will they not be open before the Supreme Court?

Mr. Edmunds: I will not say they will not be open before the Supreme Court, because the Supreme Court, I do know has not passed any formal order with regard to the demurers.

The Court: It is perfectly obvious to me that whatever my views may be on the demurrer and whatever authority I may have to recommend to the Court on that matter, I would still have to take all the testimony. As I feel about it now, I am perfectly willing to hear the demurrers, but whatever my views may be about the demurrers, I am going to take the testimony.

Mr. Lyles: (Argument.)

The Court: The matter is not free from doubt, but I am going to hear the demurrer, but whatever my view may be on it, I am going to take the testimony.

Mr. Lyles: I want to submit a typewritten memorandum that I prepared for submission on the former status of the pleadings and also the argument that we filed in the Supreme Court. (Passes them up to the Court.)

There is an agreement between counsel and the Referee that no exceptions are to be noted to the rulings of the Referee. The positions of everybody will be protected.

The Court: I fully understand that the petitioners take the position that the demurrer is not before me. I hold

that the question is not free from doubt, but I will hear the demurrer, but I am going to take the testimony, regardless of my view of the demurrers.

(After full argument by counsel representing both peti-[fol. 316] tioners and respondents, a motion was made to adjourn the reference until Friday, March 2nd, 1928, in order to permit counsel to go to Charleston, S. C., to attend the hearing in Bankruptcy in re: Columbia Railway, Gas & Electric Company. This motion was granted, and the Court ordered the reference adjourned until March 2nd, 1928, at ten o'clock.)

Friday, March 2nd, 1928.

Mr. McLain: At the last reference you called on behalf of Columbia Railway, Gas & Electric Company, a motion was made to dismiss the petitions as to it, and you ruled as I recall, that it was a matter that could wait and was not a matter that should be disposed of immediately. We are in a situation where we should like to know at this stage, if possible, what Your Honor's ruling will be on that petition—on that motion to dismiss, because I am supposed to be attorney in the Bankruptcy Court for the Bankrupt. I have no authority, so far as I know, to represent the Bankrupt without some order from the Bankrupt, and I do not know whether you are prepared to rule on the motion or not.

The Court: My view of the matter is that this proceeding of course will conform to the order of Judge Cochran, dated February 2nd, 1928. Therefore, the cause that we are now hearing shall in no way or manner effect the property or street railway system of Columbia Railway, Gas & Electric Company—I think that is clear. As to your motion to dismiss with reference to the company that is now in Bankruptcy: As I see it, the Referee could only recommend to the Supreme Court. The view I now take is that I do not think it is necessary to pass upon it at this time, but this [fol. 317] proceeding must conform with the order of Judge Cochran so as in no way or manner to effect the property or railway system of Columbia Railway, Gas & Electric Company.

Mr. McLain: I call your attention to the order of Judge Cochran (Reads portion of order). It seems to us under

that construction, it is a stay order against any proceeding against Columbia Railway Gas & Electric Company.

The Court: I think so too.

Mr. Belser: We understand that to be the effect of the order. That does not pass upon the question of what property does belong to Columbia Railway, Gas & Electric Company.

Mr. McClain: I call your further attention to the fact that the order of the Supreme Court, as we understand it, provides exactly the same thing as Judge Cochran's Order. We wish to announce then that none of us represent in this proceeding Columbia Railway, Gas & Electric Company, and that, so far as this proceeding is concerned, it is without representation on the part of the attorneys appearing in this cause, and that the company itself does not appear in this proceeding.

The Court: Yes, sir.

Mr. Lyles: In our original pleadings, we filed a motion to strike out, going to certain portions of this petition, and it largely depends on the same questions as the demurrers. I want to ask the Court's permission to get Your Honor to rule that we are not waiving that motion and give us permission to take it up in connection with the objections to evidence.

The Court: The permission is cheerfully granted.

[fol. 318] Mr. Lyles. There is no doubt about the fact that I understood your Honor to state that you will follow the practice in this case that no exceptions need be noted?

The Court: Yes, sir. I have given such consideration to the demurrers in this case as time would permit. In this connection I have examined the proposed amended demurrer which I declined to receive, but I find that the original demurrers are sufficient to raise all the questions suggested by the amended demurrer. My view at present is that the petitions contain sufficient allegations to withstand the demurrers, but this statement is made now without prejudice to a mature and careful consideration of all the issues of law, as well as of fact, which may arise from the pleadings of the evidence, and my report to the Court will, of course, set forth my conclusions in detail upon such issues. As Judge Gage once said in his terse manner: "I think rights ought not to be settled on the pleadings ex-

cept in a plain case. The testimony will show the presence or absence of a wrong."

In reference to the additional return permitted to be filed by the respondents, nothing was said by counsel for petitioners as to whether they would deem it necessary or advisable to traverse or otherwise reply to the same. Permission will be, and is, however, granted to them, to make such traverse and/or reply as they may elect. Otherwise, the additional return will be deemed to be denied by the petitioners, and their objection to the filing of such additional return will be incorporated in the record.

In order that there may be no misunderstanding, the Referee repeats that it will not be necessary for counsel for any of the parties to make any formal exceptions to [fol. 319] the rulings or suggestions of the Referee during the course of the hearing. It will be assumed that all such rulings or suggestions which are not expressly agreed to by counsel for all parties are excepted to.

In reference to the testimony to be taken the rule is that the testimony objected to shall be taken on a separate sheet. This method not only entails a great deal of additional work on the stenographer, but it seems to me will also entail additional work on the Court in the review of the record. If counsel will, therefore, agree for all the evidence to be received as offered subject to any objections which may be made and entered in the record without requiring the objected testimony to be entered on a separate sheet, we will proceed in this way. However, the matter is one solely for counsel to decide and either method will be entirely agreeable to the Referee.

Mr. Edmunds: It is perfectly agreeable to us.

Mr. Belser: We think that is desirable.

Mr. Lyles: We have no objection to that course. It will of course be undrestood that it is no waiver of an objection, but it is a question of mechanically developing the testimony.

Mr. Belser: I want to file two papers—notices to produce. I would like to call on counsel for the defendants to let us have a report on which of these documents they have in evidence, and, if it is agreeable to you, I will just call by number so that we can know what we have on hand and what we have to prove from the record.

Mr. McLain: In order to make the reference record complete, I understand you have as part of the record a certified copy of Judge Cochran's Order?

The Court: Yes, sir.

[fol. 320] Mr. McLain: We wish to file a certified copy of the petition of Columbia Railway, Gas & Electric Company, upon which said order was granted.

The Court: All right, sir.

Mr. Belser: Has your Honor the records we filed originally in the Supreme Court?

The Court: The Clerk turned over these records to me.

Mr. Belser: Now, as to our Notice to Produce of January 17th, 1928—What about No. 1?

Mr. McLain: So as we know, there was never such a deed, Mr. Belser.

Mr. Belser: No. 2?

Mr. McLain: We have not that.

Mr. Belser: No. 3?

Mr. McLain: We have not the original, but we have a certified copy.

Mr. Belser: No. 4?

Mr. McLain: We have that.

Mr. Belser: No. 5?

Mr. McLain: We have that.

Mr. Belser: No. 6?

Mr. McLain: Yes, we have that.

Mr. Belser: No. 7?

Mr. McLain: No, we have not that.

Mr. Belser: No. 8?

Mr. McLain: No.

Mr. Belser: No. 9?

Mr. McLain: No, we have not that.

Mr. Belser: No. 10?

Mr. McLain: Yes, we have that.

Mr. Belser: No. 11?

[fol. 321] Mr. McLain: Yes.

Mr. Belser: No. 12?

Mr. McLain: Yes.

Mr. Belser: No. 13?

Mr. McLain: I think we have that.

Mr. Belser: No. 14?

Mr. McLain: I think we have that.

Mr. Belser: No. 15?

Mr. McLain: No, we have not that. I think we have a copy of it probably.

Mr. Belser: No. 16?

Mr. McLain: No, we have not that.

Mr. Belser: No. 17?

Mr. McLain: (We will object to being required to produce any financial reports.)

Mr. Belser: Have you got it?

Mr. Le Pine: No.

Mr. Belser: No. 18?

Mr. Le Pine: We have the stock books of the Columbia Railway, Gas & Electric Company, but not of Broad River Power Company. The stock books of the Broad River Power Company are kept at the Transfer Agent, which I understand to be the Chase National Bank of New York, from which place they cannot be removed by even the corporation.

Mr. Belser: No. 19?

Mr. Le Pine: We do not know what that refers to.

Mr. Belser: Now, the second notice, dated the 20th of January. No. 1?

Mr. Le Pine: We have with us copies of all financial circulars and so forth issued in connection with the sale of stock of Broad River Power Company, which contain copies of the letters on which they are based.

[fol. 322] Mr. Belser: Mr. Referee, for the convenience of the Court and of all parties concerned, we have prepared an abstract of the documentary evidence, which refers to, and embraces, I think, practically all of the documentary evidence that we want to introduce, and I simply put it together in this form so that the Referee would have it together in order to look through it. I have not had all of these papers in here certified, but I do not assume there will be any objection to the language incorporated, but I will be glad for counsel at their leisure to look them over, and, if they have objection, let us know.

Mr. Lyles: Without waiving any of our rights in the premises, we will be glad to examine the document at any opportunity we may have.

Mr. Belser: I believe the contract copied in here, which is taken from the records, contract with Columbia Land & Investment Company, has a line left out, but that appears in the original document, and I will have that corrected.

Mr. Lyles: Our understanding is that this will be offered item by item. I understand this is just prepared for the convenience of the Court.

Mr. Belser: We would like to introduce in evidence the charter of the Broad River Power Company—certified copy. It is introduced and marked Exhibit No. 1. I don't think it is necessary for us to read these various documents we put in evidence.

Mr. Lyles: Our objection to that paper is purely on the ground of its irrelevance. It does not have any relevancy to the question under consideration.

The Court: It will be admitted in evidence.

Mr. Belser: For the purpose of clarifying and simplifying the record, I want to call attention particularly to this [fol. 323] paragraph of the powers and the business which this concern is authorized to do—sub-paragraph "c" (Reads it). "To build, construct, acquire by purchase, lease, consolidation, merger or otherwise, and operate street railways, motor buses, lines of transportation, lines for freight and passengers, etc."

I also want to call attention to paragraph "n" of this charter. It is expressly provided that "the foregoing shall be construed both as objects and powers" * * *

We want to consider in evidence the merger Act itself.

Mr. Lyles: What do you mean by the Merger Act?

Mr. Belser: The Merger Act of 1925. The Act is found in the 1925 Acts at page 842 and 843. It is set out in full in this abstract of documentary evidence at pages 42 to 48.

W. R. Watson, sworn.

Direct examination.

By Mr. Belser:

Q. Mr. Watson, you are the Assistant Deputy Secretary of State?

A. Chief Clerk in the Secretary of State's Office.

Q. You have in your hands the file on the Broad River Power Company, Mr. Watson?

A. Yes, sir.

Q. Have you got a certain letter from Messrs. Elliott and McLain, dated June 25th, 1925?

A. Yes, sir.

We want to offer in evidence this letter.

Mr. Lyles: We object to this letter being introduced in evidence on the ground that it is irrelevant and incompetent, and we would like to ask counsel the purpose of the introduction, if that is the proper procedure. I don't know whether I have a right to ask that or not.

[fol. 324] Mr. Belser: I don't know that it makes a great deal of difference. It is stamped on the back and calls attention to the fact that the Merger Act of 1925—it is a part of the record of the Secretary of State's Office, on file in file No. 13847.

The Court: I think it has very little bearing on the case, but I will admit it.

Mr. Lyles: I presume counsel is offering this letter really for the apparent expression of opinion on the part of the counsel writing the letter as to the legal effect of these proceedings that were taken under this statute. Of course the opinion of counsel, expressed in a letter which is not a part of the incorporating statutes would be only his opinion.

The Court: He cannot construe the statute. It will be admitted now.

Letter introduced in evidence and marked Exhibit No. 2.

Q. Mr. Watson, at the same time this letter was received by your office, they sent in a check, Messrs. Elliott & McLain, for $30.00, as stated in that letter?

A. Yes, sir.

Q. The check was taken in payment of the fees under the Merger Act?

A. Yes, sir.

J. P. Darby, sworn.

Direct examination.

By Mr. Belser:

Q. Mr. Darby, you are the Secretary of the Railroad Commission?

A. Yes, sir.

Q. Have you got there the record of this proceeding which [fol. 325] was held sometime ago against the Columbia Railway, Gas & Electric Company, and to which Broad River Power Company was made a party?

A. Yes, sir; I have the office file on that, which is arranged in chronological order.

Mr. Belser: I want to introduce that in evidence.

Mr. Lyles: Does that contain all the orders issued by the Commission?

Witness: Yes, sir. I don't know whether it goes back of last year, Mr. Lyles. This record goes back to September of '25.

Mr. Lyles: Hasn't that record a lot of correspondence in addition to orders, etc.?

Witness: It is a complete file—letters and everything. It is in chronological order.

Q. This testimony is part of the file?

A. Yes, sir.

Q. Certified to by the Reporter?

A. Yes, sir; the reporter is here himself,—Mr. Walker.

Mr. Belser: These are issues of the Commercial Financial Chronicle of New York City.

Mr. Lyles: We have no objection to the orders issued by the Commission, the official orders, except that we question their relevancy. On the question of relevancy, I think it would be proper at this time to state my ground fully so that the Referee might have it in mind. As this case has been limited by the stay order of the Federal Court, which has been carried into effect by the order of the Supreme Court, we are not to inquire into, or take any proceedings against or do anything that may lead to relief effecting the property of the bankrupt. The proceedings before the com- [fol. 326] mission, the orders issued by the commission, relate exclusively to the operation of street cars on the rails and tracks of the bankrupt, and, therefore, are irrelevant in this case, because we cannot in this case seek to impose any obligation on the Broad River Power Company with reference to the operation, or that would in anywise effect the property of the Bankrupt. We consider, therefore, the orders in this case, all of which are directed to the Bank-

rupt and relate to the operations of its property, to be entirely irrelevant under that phase of the case as limited.

Insofar as the record offered, do I understand, Mr. Belser, that you offer not only the testimony and orders of the commission, but all of this correspondence?

Mr. Belser: No, sir; we do not intend to have the correspondence in the case.

Mr. Lyles: What you offer then is the orders of the commission and the testimony before the commission?

Mr. Belser: Yes, sir.

Mr. Lyles: I have stated my objection to the orders of the commission, and we object to the testimony taken before the Commission, because this is a proceeding in the Supreme Court, and the testimony must be taken here according to the rules of evidence applied in this Court. The testimony taken before the Commission of itself is not applicable here, and I understand it is offered as a whole. It certainly is not relevant, and we are entitled to a trial before this Court and the testimony taken before this Court in the manner prescribed by our rules of evidence, and not to trial here on testimony taken before another tribunal.

The Court: I will hear you on that, Mr. Belser.

[fol. 327] Mr. Belser: I don't know whether your Honor has had an opportunity to read over the record in this case, but the record shows that the Broad River Power Company was made a party to this proceeding.

The Court: I want to hear you on the question as to whether the testimony taken before the Railroad Commission can be introduced.

Mr. Belser: The Broad River Power Company was a party to the action. They considered the Broad River Power Company, and they had all of the officers, and the testimony was directed to the Broad River Power Company. (Reads at page two of the testimony taken before the Railroad Commission.

The Court: I have in mind this—would the testimony taken before the Railroad Commission as such be admissible here?

Mr. Belser: Yes, sir. The railroad Commission is a party to this proceeding and is asking that its orders be enforced. (Continuous argument.) (Then reads Section "g" at page 1788 of the Code of Laws of 1922.)

The Court: This is not an action to review the orders of the Railroad Commission, is it?

Mr. Belser: It is an action to enforce it in part.

Mr. Lyles: (Points out section of Code of Laws relating to the question.)

Mr. Belser: Under the sections of the law, orders of this kind are always enforced by bringing in testimony that forms the basis upon which the relief is demanded.

The Court: This section relates to a proceeding brought in the Court of Common Pleas with a view to the right to appeal to the Supreme Court. The case we have here is an original proceeding in mandamus, brought by the At-
[fol. 328] torney General primarily. I can't see how the testimony taken before the Railroad Commission can be competent in this case. Under the rule, the record will all be before the Court. My view at the present time is that the testimony taken before the Railroad Commission cannot form a basis for decision of this case.

Mr. Belser: Our idea is that the Railroad Commission is a party—they are asking that their order be enforced. They could make a separate proceeding out of it. It is an application by them for a writ of mandamus enforcing their order.

The Court: It appears to me at the present time it would not be competent. Of course the entire record would come in as having been objected to. I may change my mind, but that is the view I have of it now.

Mr. Lyles: I may not have made clear to the Court my objections to the orders of the Railroad Commission, and, as we consider this a very vital phase of this matter, and there will be other testimony subject to this objection if the Court will permit me, I will state it again. The orders are directed to, and relate only to, the Columbia Railway, Gas & Electric Company, the Bankrupt, and the subject matter of these orders is the operation of street cars or non-operation of street cars over the lines and system of the Bankrupt, and we respectfully submit that those orders relate only to the Bankrupt and to the property of the Bankrupt, and to use them, receive them in evidence, and act on them as a basis of any relief whatsoever in this cause would be effecting the Bankrupt and its property; and, in that connection, we would further call the Referee's attention to the fact that, while the Broad River Power

Company at one stage of the proceeding was called in, the [fol. 329] result of the proceeding was only directed to the Bankrupt.

The Court: I understand the objection. It is a question of relevancy. But they will be admitted for the present.

Record of the Railroad Commission introduced in evidence and marked Exhibit No. 3, 3a, 3b, 3c, 3d, 3e, 3f, and 3g.

(The above record includes the orders of the Railroad Commission, five copies of the publication "Commercial & Financial Chronicle of New York", and the testimony taken before the Railroad Commission.)

Mr. Belser: Do I understand Your Honor rules tentatively that the record in the form of the orders are proper evidence, and the opinion of the Railroad Commission, but not the evidence, as evidence in this case?

The Court: Yes, sir; that is right.

Mr. Belser: According to your present view, we have to repeat that evidence.

Mr. Lyles: The counsel said nothing at first about offering the opinion.

The Court: I took the opinion to be their final order.

Mr. Lyles: The opinion is no part of the order, and we object to the introduction of the opinion on the grounds that we submitted to the introduction of the evidence and on the grounds that we submitted to the introduction of the orders. I do not suppose it is necessary to repeat those?

The Court: I will let the opinion in tentatively as part of the order.

Mr. Lyles (After looking at file of the Railroad Commission): If we do not get definitely when we are going along these matters straight, and for the salvation of all of us [fol. 330] and as part of the record, I think this thing (the file) should be segregated, and all of the correspondence taken out and the opinions that he is offering be taken out and submitted to us—submit to us the record as a practical matter.

Mr. Belser: I think that is a good suggestion.

(The file of the Railroad Commission was returned to Mr. Darby, with instructions that he take out all corre-

spondence contained therein, and arrange the orders, etc. in chronological order.

Mr. Belser: We want to consider in evidence the various statutes creating the Columbia Electric Street Railway, Light and Power Company, page one of the abstract of documentary evidence through page eight. I think these are exact copies of the statutes which created Columbia Railway, Gas & Electric Company. The name was afterwards changed from Columbia Street Railway, Light & Power Company to Columbia Railway, Gas & Electric Company.

Mr. Lyles: If he is offering that as evidence, we repeat our objection to the relevancy—that would relate only to the bankrupt.

The Court: I will consider them solely as citations.

G. F. Cooper, sworn.

Direct examination.

By Mr. Belser:

Q. You have been Treasurer of the City of Columbia for some twenty odd years?

A. About twenty-three years.

Q. City Clerk, I mean?

A. Yes.

Q. You have got there some of the original minute books [fol. 331] of the City of Columbia?

A. Yes.

Q. Have you got there the record showing the petition which was originally filed by old Columbia Street Railway Company, asking permission to use the City Streets?

A. Yes, sir.

Q. Turn to that petition of the 8th of June, 1886?

Mr. Lyles: I assume counsel is going into the proof of ordinances of the City of Columbia relating to the Columbia Railway Gas & Electric Company, and first I call attention to the fact that counsel clearly called to the attention of the Supreme Court what he has alleged in his petition, and the return has admitted certain ordinances of the

City of Columbia. I should think, under the ordinary rule, that would determine the ordinance as coming—going to be put in. We object to any dealing between the Columbia Railway, Gas & Electric Company, the Bankrupt, and the City of Columbia, or its predecessor, because the dealings were originally had with its predecessor, the Columbia Street Railway, Light & Power Company. We object to any ordinances of the City of Columbia on the ground of irrelevancy, because they relate to the Bankrupt and the property of the Bankrupt, and so, therefore, are not to be used as the basis for any relief in this cause.

The Court: They will be admitted, and the question of relevancy determined later.

Mr. Belser: I understood my friend had objected to the sufficiency of some of the ordinances.

The Court: I call attention to the fact that the first order of the Supreme Court suggested that the documentary evidence was incomplete. So whatever documentary [fol. 332] evidence you think ought to be put in, submit it.

Q. Mr. Cooper, have you got there the petition of the 8th of June, 1886?

A. Yes.

We want to introduce the petition of June 8th, 1886, addressed to the Mayor and Aldermen of the City of Columbia.

Mr. Lyles: Our objection, we have stated.

The Court: It will be admitted at this time.

Mr. Belser: We want to introduce in evidence the petition for street railway, dated June 8th, 1886, addressed to the Mayor and Board of Aldermen of the City of Columbia, by H. W. Pearson, W. E. Laton and E. Benedict, found on pages 569 and 570 of the Minute Book of the City of Columbia, from January 8th, 1883 to September 1886.

Marked Exhibit No. 4.

Q. Have you got there a copy of the ordinance which was enacted in pursuance of that petition, on the 29th of June, 1886?

A. Yes.

We want to offer in evidence that ordinance.

Mr. Lyles: We make the same objection, and the same objection applies to all of these documents and papers.

The Court: I will say this—we are not going to be rigid about that. If later on something occurs to either of you, make it known.

Mr. Belser: I first want to call attention to the paragraphs from the ordinance appearing on page 583. This is in the minutes of June 29th, 1886. "The petition of sundry citizens in favor of granting three tracks on Main Street to Street Railway Company was read. The motion is received as information. On motion the ordinance relating to street railways be taken up and considered.
[fol. 333] Mr. LePine: This is argument, and might be better deferred until we later have an opportunity to argue it fully.

The Court: Yes, sir; I think so.

The ordinance, appearing on pages 583, 584, 585, 586, 587, 588 and 589 introduced in evidence and marked Exhibit No. 5.

Q. Mr. Cooper, have you got also the petition of the Columbia Railway, Light and Power Company, dated September 13th, 1892?

A. Yes.

I want to offer in evidence this petition from Columbia Electric Street Railway, Light & Power Company as to erecting poles for electric street railway, occurring on page 560 of the minutes of the City of Columbia of December 1889, to April 1893.

Marked Exhibit No. 6.

The ordinance following that of the 11th day of October, 1892, which occurs at page 584, and 585 and ends on page 586, on this same minute book, introduced in evidence and marked Exhibit No. 7.

Q. Mr. Cooper, have you got here an original copy of the ordinances, Revised Ordinances of 1907?

A. Yes.

Mr. Lyles: Wouldn't it be a good idea to consider these books in evidence. I assume you are putting in everything, but if we should find you have ommitted something, you

just consider the books in evidence, subject to the objections.

Mr. Belser: If anything is discovered which we hav-n't seen, we would like to take whatever action is necessary and proper.

[fol. 334] Q. Mr. Cooper, you have got in your hand an original copy of the Revised Ordinances of 1907?

A. I have.

Q. That contains a great many ordinances effecting street railways, doesn't it?

A. It does.

Mr. Belser: Mr. Lyles, do I understand that you people are prepared to admit the correctness of the ordinances referred to?

Mr. Lyles: I make a tentative offer—I am perfectly willing to admit these—the printed ordinance book.

Mr. Belser: I want to know if you admit the correctness of the ordinances as there printed.

Mr. Lyles: I am not going to admit that they are in exact accord with the originals, because I hav-n't examined them.

Mr. Belser:

Q. That book you have is the original copy of the Revised Ordinances of the City of Columbia of 1907?

A. Yes, sir.

We want to offer in evidence this book, Your Honor. I have a copy which I think is the same.

Q. That is signed by the Mayor?

A. Yes, sir.

Q. Is that the same substantially as the copy you have there of the original you have just testified to?

A. Yes, sir; it is an exact copy.

We want to introduce in evidence this black book, a copy of the revised ordinances of 1907, and we call particular attention to the sections relating to street railways, sections 549 through section 568, beginning at page 144, through page 149. I think all of those ordinances that were subsequently enacted are embraced in the copy of the *copy of*

[fol. 335] *the* abstract of documentary evidence which I gave to the Court, pages sixteen through nineteen.

Marked Exhibit No. 8.

Q. Have you got, Mr. Cooper, petition from the Suburban Transit Company?

A. No, I have not. I have had very little time since you called me to look for it.

We offer in evidence Sections 569 and 573, relating to the grant of Suburban Transit Company, appearing on pages 150 and 151 of this ordinance.

Marked Exhibit No. 9.

Mr. Lyles: We make the objections already stated, and in addition to that, the Suburban Transit Company merely dee- to the Bankrupt a line of street railway, and we object to that particular ordinance relating to Subu*b*ran Transit Company on the ground that it has no bearing on the bankrupt.

The Court: The objection will be considered with the question of relevancy.

Q. This is a copy of the revised ordinances of 1920. There are some additional ordinances in here that are not in the ordinances of 1907. I would like to introduce in evidence this copy of the ordinances of 1920. Do you know whether that is a correct copy of the ordinances relating to street cars up to that time?

A. Yes, sir; that is a copy.

Copy of Ordinances of 1920 introduced in evidence and marked Exhibit No. 10.

I want to offer in evidence particularly of the 1920 ordinances the ordinances relating to street railroads, beginning with section 579 covering the Suburban Transit Company down through section 620, occurring at pages 189 through page 201, and also ordinances, sections 708 through [fol. 336] 711, occurring at page 248, and section 720, occurring at pages 252 and 253.

The Court: Admitted subject to objection.

Q. There is a little subsequent pamphlet form of ordinances covering the period from 1919 to 1924?

A. Yes.

Q. This ordinance that I hand you is a copy of the ordinance dated in 1921?

A. This was taken out of that book, wasn't it?

Q. Yes, sir.

A. Yes.

Mr. Lyles: I suggest that Mr. Cooper locate the book and fix up a certified copy at his leisure.

Ordinance above referred to introduced in evidence and marked Exhibit No. 11.

Q. You have been living in Columbia a right good while?

A. Yes.

Q. Practically all of your life?

A. All of my life.

Q. You are familiar with the street railway system as located in this community?

A. I think so.

Q. Mr. Cooper, this appears to be a map of the City of Columbia?

A. Yes, sir.

Q. Do you notice this red line here—here is a red line extending from the Capitol out Main Street beyond Elmwood Avenue and out by Hyatt's Park out to Ridgewood near North Columbia. You know the railway lines?

A. Yes.

Q. There is a line running down to the River on Gervais Street?

A. Yes—Polaska(?)

[fol. 337] Q. There is a line running down by the Union Station down to the village of Olympia—you know the street car line there?

A. Yes.

Q. There is a line running out Market by this red line here, goes out Gervais, turns at Harden, going out Harden and then going out Divine and then going out to Mr. Hyatt's property?

A. Yes, there is a line there.

Q. There is a line that turns off Divine Street and goes out into what is known as Shandon Annex?

A. Yes.

Q. There is a line turning off Harden Street and running up Saluda Avenue into the section known as Wales Garden?

A. Yes, sir.

Q. There is a line which runs down Laurel Street, then down Bull and goes out by the State Hospital property, and goes out into what is known as Colonial Heights?

A. That is correct, yes.

Q. Then there is a line which runs down Laurel and then goes down to Pickens and turns south and runs out east on Blanding and turns out on Gregg Street?

A. Yes.

Q. There is a line that goes out Glennwood Avenue out to the Cemetery?

A. Yes.

Q. This line here (indicating on map) goes out Hyatt Park into the Ridgewood Section?

A. Yes, sir.

Q. Do you know if the poles along all these routes where the street car tracks used to be are now there?

A. I think they are.

[fol. 338] Q. They all carry the electric wires?

A. Yes.

Q. The yellow lines represent the City Limits?

A. Yes, sir.

Q. The red lines on this map represent the street car tracks?

A. Yes.

Q. Do you know who controls the electric lines in the City of Columbia?

Mr. Lyles: We object.

Q. You have the contracts for furnishing power to the City of Columbia, haven't you, Mr. Cooper?

Mr. Lyles: We object—the contracts would be the best evidence.

Q. The City of Columbia has a contract with the Broad River Power Company for supplying all light and power?

A. Yes.

Q. Do they use the poles along all these streets for carrying all their light wires?

A. Yes.

Q. The same poles that carried the trolley wires?

A. Yes.

Q. That contract is with the Broad River Power Company?

A. Yes.

We offer in evidence contract with the City of Columbia and Broad River Power Company.

Marked Exhibit No. 12.

Mr. Lyles: We make the same objection of irrelevancy.

The Court: It is admitted.

We offer in evidence another contract with the Broad River Power Company.

Marked Exhibit No. 13.

Mr. Belser: We put in these two contracts merely for the purpose of showing that the Broad River Power Com-
[fol. 339] pany controls the power lines.

We would like to introduce this map of the City of Columbia.

Marked Exhibit No. 14.

Mr. Lyles: Note the same objection.

Q. Have you the resolution passed in June, 1927—I believe I asked you to bring that resolution and ordinance of January, 1928.

Mr. Lyles: I understand you are offering the map showing the street lines in question today.

Mr. Belser: Yes, sir; and the system and the poles.

Witness: That resolution, I did not bring.

Mr. Lyles: We will receive a certified copy of the same as the original.

Q. Do you know what plant the old Columbia Railway, Gas and Electric Company used to supply its electric power and lights in the City of Columbia?

A. Yes, sir.

Q. What physical plant—where it was located?

Mr. Lyles: The same objection of irrelevancy as to that question.

The Court: Yes.

Q. You know where they had the sub-station?

A. Assembly and Washington.

Q. Who controls that plant now?

Mr. Lyles: That is a matter of record. It is a question of ownership of the property.

The Court: No, he cannot prove ownership of property. I think you might prove who operates it.

Q. Who operates it?

A. Broad River Power Company.

Q. That is the same company that made the contract with the City of Columbia?

[fol. 340] A. Yes.

Q. Is there any other Company supplying power over the poles and wires?

A. None other.

Q. Power and electricity?

A. That is right.

Q. Gas too?

A. Yes, Gas, Power and Electricity.

I want to introduce in evidence this ordinance dated the 24th day of January, 1928.

Marked Exhibit No. 15.

Mr. Lyles: In addition to the objections already stated to this line of testimony, I would call Your Honor's attention to the fact that this ordinance was adopted after this suit was started and after the City of Columbia had intervened in the suit, and it is nothing more than a self-serving declaration

The Court: It will be admitted subject to further consideration.

GEORGE W. NEWMAN sworn.

Direct examination.

By Mr. Belser:

Q. Have you the deed from Eau Claire Street Railway Company to Columbia Street Railway, Gas & Electric Company?

A. Yes, we have that (hands papers over to Mr. Belser).

Mr. McLain: We wish to call attention to the fact, in addition to the various objections made, it is supposed to be on file with the Bankruptcy Court. If he wishes to introduce the original paper, it will be subject to the Bankruptcy Court, and he can get a copy.

Mr. Belser: We have no objection to that.

Q. Mr. Newman, you have been living in the City of Columbia a good many years?

[fol. 341] A. Yes.

Q. How many years?

A. About sixty-five years.

Q. Back about 1896 Mr. Hyatt came to you with a view to getting some rights of way to build a street car line?

A. I was connected with Mr. Hyatt in that transaction myself.

I want to offer in evidence, for the purpose of this examination, this copy of the deed which is on record. I will produce the record of it. It is page 37 of the abstract of documentary evidence.

Mr. Lyles: You are offering this one—A or B?

Mr. Belser: Sub-section A.

Mr. Lyles: Is this a complete copy of that paper?

Mr. Belser: Yes, sir. D, at page 39, I think is a complete copy too, but E is not complete. The others, I think are complete.

Mr. Lyles. We will not object to Mr. Belser proceeding with the copies, subject to confirmation as to their being correct copies. We may as well state our objection as to any dealings, contracts or deeds between these parties looking to the building of the Columbia and Eau Claire Electric Railway Company on the ground that we have been advancing. In the final analysis that company became owner of the properties of the Bankrupt, and the same objections we have advanced would apply, and we further object to dealings between these parties, which were not even with that company.

Q. Mr. Newman, I hand you here at page 37 a copy of the agreement that you made with Mr. Hyatt at the time—

that is a correct copy of the agreement that you made, is it?

A. That is my recollection. It has been a long time ago.

[fol. 342] Q. I notice that in this agreement you made with him that you say "whereas, the construction of such a road would be of advantage and benefit to intervening lands," and so forth, and you further say "in consideration of the premises, you grant this right to use the land," and so forth. What, if any other consideration, did you get for granting it?

A. I didn't get any money consideration.

Mr. Lyles: I object. We think that is subject to the parol evidence rules. This is dealings between these parties and not even Columbia and Eau Claire Electric Railway.

The Court: I will let him answer the question. It is a little doubtful. On the matter of the consideration, I think he can prove the consideration. Its relevancy to the whole situation is difficult to say. You can go ahead.

Q. Mr. Newman, was the street car line built over there under this agreement?

A. Yes, sir.

Q. Were you connected with the Columbia and Eau Claire Street Railway after it was formed?

A. Yes, sir.

Q. You know the Columbia and Eau Claire Street Railway Company transferred its line to the Columbia Railway Gas & Electric Company?

A. Yes.

Deed from the Columbia and Eau Claire Street Railway Company to Columbia Electric Street Railway and Power Company introduced in evidence and marked Exhibit No. 16.

Q. After this property was conveyed by the Columbia and Eau Claire Electric Railway Company to the Columbia [fol. 343] Street Railway, Light and Power Company, did the old Columbia and Eau Claire Railway Company do any further business at all?

A. None that I know of.

Q. Do you know whether any use is being made of the poles right along the street car line where the street cars used to run?

A. Nobody is using them now. No cars are being run.
Q. How about wires on the poles?
A. Yes. Wires is on the poles, but I don't know whether telephone or electric wires.
Q. They used to serve that railway line?
A. Yes; used to run the cars.
I want you to consider sub sections A, B and D of abstract of documentary evidence in evidence, all of which are recorded at pages 37, 38 and 39.

The Court: Subject to the same objection.

Q. People out in that community are receiving electric lights now, coming from those same poles?
A. I don't know whether they come from the same poles or not. There are so many poles on each side of the road that I don't know which it is.

Cross-examination.

By Mr. Lyles:

Q. Colonel George, that street railway track is still there?
A. Yes.
Q. That was the track that run from Elmwood Avenue out to Hyatt's Park?
A. Yes, sir.
Q. That is the line that has always been there?
A. Yes, sir.

August Kohn, sworn.

[fol. 344] Direct examination.

By Mr. Belser:

Q. Mr. Kohn, you are interested in the North Columbia Land Company?
A. Yes, sir.
Q. You are an officer of it?
A. Secretary of it.
Q. That paper you have in your hand?
A. I may not have been Secretary at that time.
Q. Mr. Elliott was President at that time?

A. Yes.

Q. That is a contract with the North Columbia Land Company?

A. Yes, sir; it has my initials on it.

Q. Did North Columbia Land Company carry out that contract?

A. Yes, sir.

Q. The North Columbia Land Company carried out this part of the contract?

A. Yes, sir.

Q. Did the Columbia Land Company operate its cars along the line therein referred to?

A. Yes, sir.

Q. That contract has never been terminated by your authority or consent of your company?

A. No, sir; not that I know of.

Q. Is that contract still in force?

A. Yes, sir.

Mr. Lyles: I object to that. That is a conclusion of law.

The Court: That is a conclusion of law.

Q. Are the poles still along the line by the side of the [fol. 345] street car track that runs out there in that property?

A. As far as I know they have never been removed.

Q. Do you know whether they still carry electric wires?

A. Nothing has been disturbed.

Q. Except they have stopped running street cars over the rails?

A. Yes, sir.

Q. Please come up here and show what property was covered by that?

A. (Witness goes to map.)

Q. That is Columbia College here?

A. Yes, sir.

Q. This is North Columbia Land Company's property out here (Indicating)?

A. Yes, sir; the line was operated to Columbia College when North Columbia Land Company acquired the property, when the Street Car Company built its line out here

(indicating), which is indicated by the red line, which is now known as Greenville Street—a distance of two miles.

Q. The poles are still along there carrying electric wires? Do you know whether they carry any electric wires?

A. They do; unless they have been removed since I was there last, which was in the last few days.

We want to introduce in evidence that contract.

Mr. Lyles: That contract identifies a particular line that is covered by the motion to strike out, and we renew the motion for that.

Witness: This contract, I can state, was in 1906, and then we finished so far as we were concerned, with this which is on the back, relieving ourselves from further payments.

Mr. Lyles: We object to that.

Q. You paid something like Two Thousand (2,000.00) [fol. 346] Dollars in cash.

A. I can't say, but we terminated the payments.

Cross-examination.

By Mr. Lyles:

Q. What was the date of the contract?

A. 1906.

Q. When did operations of street cars cease on that line, if you know?

A. Within the last twelve months, as I recall it.

Q. This contract was dated the 24th of August, 1906—As a matter of fact, wasn't the date of cessation of operations on the 11th of March?

A. I couldn't say. It was about a year ago.

Redirect examination.

By Mr. Belser:

Q. There was an amendment to this thing in 1919?

A. Yes, sir.

Q. They came and asked for authority from the North Columbia Land Company to raise the rates?

A. Yes, sir, and we consented.

Q. You signed a contract to that effect in 1919?

A. Yes.

Q. The Street Car Company came to North Columbia Land Company and asked for a raise on the rates?
A. Yes, sir.

Amendment to contract, contained in abstract of documentary evidence, introduced, subject to correction, marked Exhibit No. 17, and subject to previous objections.

The Court: It is admitted in evidence subject to objections.

Dr. W. B. BURNEY, sworn.

Direct examination.

By Mr. Belser:

[fol. 347] Q. Doctor, you are Professor of Chemistry of the University of South Carolina?
A. Yes, sir.
Q. Also own land around the City of Columbia,
A. Unfortunately.
Q. Will you take this paper and look at page 29 and then consider this contract here with the Shandon Annex Company?
A. (Witness reads copy of document.)
Q. Here are the two original papers.

Agreement between Columbia Railway, Gas and Electric Company and North Columbia Land Company introduced in evidence and marked Exhibit No. 18.

Mr. Lyles: Subject to the same objection.
Q. Doctor, you have had a chance to glance over that?
A. Yes, sir.
Q. Do you recognize that as the contract you had with the Shandon Annex Company?
A. Yes.
Q. That contract refers to contract between Shandon Annex Company and Columbia Railway, Gas & Electric Company?
A. Yes.

I want to offer in evidence this contract between Dr. Burney and Shandon Annex Company, and Shandon Annex Company and Columbia Railway, Gas & Electric Company.

Mr. Lyles: With reference to the contract between the Shandon Annex Company and the Columbia Electric Street Railway Light and Power Company, we have the same objections that we made to the North Columbia Land Company contracts. This relates to the so-called Shandon Annex Line, and the same objections that we made to the North [fol. 348] Columbia Land Company contract are applicable here. That contract between the Shandon Annex Company and the other company is dated the 30th of May, 1910, and they also offer contract between the Shandon Annex Company and Dr. Burney, dated the 30th day of June, 1910, or exactly one month later, and we object to that on the same grounds as the other one, and on the further ground that it is a transaction entirely between separate parties, and to which the predecessor of the bankrupt was not a party. We further add to the objections to Shandon Annex Company, that that company is now in bankruptcy, and any rights it might have would be in the Bankruptcy Court.

The Court: It will be admitted for the present, subject to objection.

Contract between the Shandon Annex Company and the Columbia Electric Street Railway Light & Power Company, introduced in evidence and marked Exhibit No. 19.

Contract between Shandon Annex Company and William B. Burney, introduced in evidence and marked Exhibit No. 20.

Q. Will you come up here a minute and let's explain to the Referee where that property of yours is located, and where the line is. I will ask you first—that contract calls for the payment of some money by you, in doing certain grading work—the contract between you and the Shandon Annex Company?

A. Yes, sir.

Q. That each should put up something like six thousand ($6,000.00) Dollars?

A. Six Thousand ($6,000.00) Dollars is right.

Q. With a trustee?

A. Yes.

Q. The money to be paid over to the Street Railway Com- [fol. 349] pany to build the line?

A. Yes.

Mr. Le Pine: We object to that. The Shandon Annex Company is not, and did not, claim to be, the predecessor of this Railway Company, or assume any obligation to operate the street railway. Dr Burney's contract, which they have offered in evidence, and which has been received subject to our objection, was a contract between himself and this other land development company. It had entered into a contract with the Railway Company, and it was not on the same basis as Columbia and Eau Claire Railroad Company. Shandon Annex Company is entirely a separate company, which had no connection with the railway company. Whatever took place between Dr. Burney and Shandon Annex Company is res inter alios acta, and the ground of our objection is based on that ground.

The Court: The testimony will be taken subject to objection.

Belser: We propose to show that the Shandon Annex Company had this contract with Dr. Burney and also the Street Car Company and the Shandon Annex Company, in behalf of its and the Street Car Company obtained a right from the Down of Shandon, and the Street Car Company operated it.

The Court: We want, as far as we can to observe all the rules of evidence. Any matters res inter alios acta should not be brought in.

Q. Doctor, this is Divine Street running out this way. Under this contract you paid your money and put it in the hands of a trustee, didn't you?

A. Yes.

Mr. Lyles: Under which contract?

[fol. 350] Mr. Belser: Under the contract in question.

Q. Did you have any dealings or connection in reference to this matter with any of the representatives of the Street Car Company? Were they familiar with it?

A. Mr. William Elliott was one of the men with whom I negotiated. I can't say in just what capacity.

Q. Who was Mr. William Elliott with reference to the railway company?

A. He was an attorney.

Q. Wasn't he general manager at that time?

A. I think he was general manager. The man to whom I gave the check of $6,000.00 was Mr. Mahon, in the Carolina National Bank. I think he had some official connection with the Company—I don't know.

Q. He was a Director of the Street Car Company?

Mr. Lyles: We object to his leading the witness. He said he didn't know.

Q. Under that arrangement between the parties, did you do some grading work also

A. I graded two blocks from Divine Street along King Street to Wheat Street at a cost of about Six Hundred ($600.00) Dollars.

Q. Through about how much of your property did that street car line run.

A. Two blocks along King Street out into the property, then it turns east and runs on into Shandon Annex—it must be six or seven blocks. That would be eight blocks in all.

Q. Did that street car line operate through your property?

A. It did.

Q. Who conducted that operation?

A. The street car company, as I understood it and under stand it still.

[fol. 351] Q. Are the poles still there?

A. I think so. The track is intact.

Q. Do you know whether or not the poles right along King Street in Shandon are still carrying electric wires?

A. No, I do not. I havn't looked to see.

Q. Did you get this letter from Shandon Annex Company, written by Mr. Ravenel, with reference to this matter?

Mr. Belser: We take the poition that all these parties, so far as the Street Car Company was concerned, the Shandon Annex Company was the agent of the Street Car Company in these transactions.

Witness: I did. I remember that.

Q. The money was paid?

A. Paid before they would strike a lick.

Q. The Street Car Company did the actual construction work?

A. It did.
Q. Across your property?
A. Yes.

Mr. Belser: I want to offer in evidence this letter.
Mr. Lyles: We make the same objections that have been offered in reference to these two contracts. Further that it is res inter alios acta. Furthermore, it is a declaration from a third person.
The Court: I doubt its competency, but you can put it in.

Q. Here is the statement that came along in that letter?
A. (Witness refers to statement).

Mr. Edmunds: You can't offer verything at once. It is very often that you have to offer some evidence through [fol. 352] a witness with the assumption that counsel is offering it in good faith and is expecting to connect it up.
The Court: That is quite true. This one happens to appear on its face not to be competent.

Q. This statement is the statement referred to in the letter?
A. Yes, sir.

Mr. Lyles: Same objection to the statement as there was to the letter.
The Court: They do not appear to be competent, but you can put them in.

Letter from the Shandon Annex Company to Dr. W. B. Burney, dated December 21st, 1910, together with statement attached, introduced in evidence and marked Exhibit No. 21.

Q. Who directed you to pay this money over to Mr. Mahon in connection with this matter?
A. I don't know.

Mr. Lyles: I understand that the alios acta goes to all of the testimony of this witness.

Q. When did they stop operating on the road?
A. That, I cannot answer. At the same time they stopped operating in the City. About a year or more ago.
Q. It was operated up until that time?

A. Continuouly from completion of the line until recently. I am not sure with regard to that question as to their stopping the operation.

Cross-examination.

By Mr. McLain:

Q. I see in this contract between yourself and the Shandon Annex Company a provision that the parties are to deposit money in The Loan & Exchange Bank to the credit [fol. 353] of G. M. Barret (??) as Trustee of Carolina National Bank to the credit of T. H. Mahon as trustee. So your negotiations with Mr. Mahon were in pursuance of the contract you had with Shandon Annex Company?

A. Yes, I think so.

Q. He was the trustee to receive this money and pay it over for some purpose?

A. I gave the check personally to Mr. Mahon.

Q. You had no contract with the Street Railway Company, did you?

A. I am hazy with regard to that. I think it was entirely through the Annex Company.

Q. Under some arrangement between the Shandon Annex Company and the Street Car Company, the Street Car Company did the actual work of constructing the line, but were paid for their labor by the Shandon Annex Company, with the exception of grading King Street for two blocks?

A. I did that myself. That, they required of me, however.

Q. Your negotiations with Mr. William Elliott were with reference to your grading of Divine Street?

A. I cannot answer that. It was either with Mr. Elliott or with the Annex Company.

Q. It was with reference to the grading of the street?

A. Yes; they did the construction work and I did the grading on those two blocks.

Q. As I understand it, you are not positive that your negotiations were with Mr. Elliott or Shandon Annex Company?

A. No, I cannot say definitely with regard to that.

Q. The Shandon Annex Company was a land development company?

A. Sure.

Q. It wasn't operating Street Cars?

[fol. 354] A. Not the Annex Company.

Q. Have you been out there recently?

A. No, I have not, except to cross the line on Woodrow Street.

Q. Have you been out Wheat Street since it was paved?

A. Yes.

Q. You said the street car track was intact. I will ask you if the city hasn't torn up the street so as to do paving?

A. I notice they have paved the street and covered up part of the track.

Q. There is no continuous track?

A. No, I think not.

Redirect examination:

Q. Do you recall whether or not you dealt with Mr. Elliott at some time in connection with this matter?

A. Mr. Elliott was present hearing these negotiations. That, I am quite sure of.

Q. He was an officer or representative of the Street Car Company?

A That, I so understood.

Q. That pavement on that street they are talking about was since this suit was begun?

A. Yes, sir; I think so.

C. M. Scott, sworn.

Direct examination.

Q. You are now, I believe, ticket agent for the Union Station?

A. Yes, sir.

Q. You have been living in Shandon for a number of years?

A. About twenty-three years.

Q. You bought a home right on the extention of the Maple Street-Shandon Line?

[fol. 355] A. Yes, sir.

Q. For many years you were Intendant for the Town of Shandon?

A. Four years.

Q. During that period, there were some negotiations with the Shandon Annex Company with reference to building a street car line down King Street into Dr. Burney's property through King Street into their property I hand you this book, and I will ask you if that is the minute book of the Town of Shandon which was in use when you were there as mayor of the town ?

A. Yes, sir; it is.

Q. Looking at page 136 of this minute book, where there appears to be an application of Shandon Annex Company for permission to operate a street car line, and page 138 where there appears to be an ordinance in reference thereto, and page 139, letter accepting the ordinance by the Shandon Annex Company—I will ask you if that application, that ordinance and that subsequent letter of acceptance embraced the negotiations so far as Shandon Annex Company was concerned, and what connection the street car company had with it?

A. That is the original.

Q. Describe the negotiations and explain how the matter was carried out?

Mr. Lyles: We want to offer the same objections to this that we did to the Shandon Annex Contract and the Burney contract with the Shandon Annex Company. We object to any parole evidence.

The Court: The relevancy is not apparent at this time, but you can get it in, however.

[fol. 356] Mr. Belser: We want to mark in evidence minute book of the Town of Shandon, calling attention to pages 136, 137, 138 and 139, marked Exhibit No. 22.

Q. I notice here that this ordinance says that this right is granted subject to the duty of the Columbia Railway, Gas and Electric Company, or Columbia Street Railway Company—upon condition that they, Columbia Railway Street and Light Company shall operate not less than four cars an hour on its line between King Street to Divine and Maple Streets to Elmwood Avenue. Did the Street Car Company for many years afterwards operate that fifteen minute schedule?

Mr. Lyles: I object. The ordinance on its face comes from the Town of Shandon granting the Shandon Annex

Company the right to run this branch line. In that ordinance they attempt to impose certain conditions on the Columbia Railway, Gas & Electric Company as to the operation of a separate line of railroad that was already constructed by that railroad prior to the incorporation of the Town of Shandon. We think that the evidence not only varies all rules, but it is beyond the realm of reason to say that company has the entire line and must run its cars every fifteen minutes without an acceptance of this remarkable ordinance, and is nothing more than a conclusion of the witness. I don't think you could prove acceptance by the company except by clear written agreement.

Q. What did they do, the Street Car Company, with reference to running cars every fifteen minutes, after the enactment of this ordinance?

A. They did run the street cars for several years on a fifteen minute schedule. On account of being not very much traffic between certain hours of day, the City allowed them to ask permission to run a thirty minute schedule.

[fol. 357] Mr. Lyles: We object to any dealings between the City and a public utility unless we had a record of it. I don't see how one man in the City could give permission.

Mr. Edmunds: If the Street Railway Company came to the City and negotiated with the officials with reference to some change with regard to operating on a fifteen minute schedule, we think that would be some evidence of showing that they had accepted the provisions of this ordinance, and that they ought in some particular to be relieved from the obligation of it. I submit to Your Honor that whether or not that relief would relieve them is another matter. If they negotiated with reference to this ordinance at all, it would be evidence of acceptance. Just like in the matter of waiver.

The Court: I am not going to shut off the introduction of testimony that yau have a right to put in.

Q. Mr. Scott, I will ask you again, did they operate their street cars after this on a fifteen minute schedule?

A. They operated on a fifteen minute schedule until sometime after the City of Columbia took in the Town of Shandon.

Q. While the Town of Shandon had it, they operated on a fifteen minute schedule?

A. Yes, sir.

Q. What, if any connection, did you have with the Street Car Company in reference to this ordinance?

A. I will make a statement, whether or not it is accepted as evidence or not will be left with his Honor. All contracts made with the Shandon Annex Company were to be accepted by the Columbia Light & Power Company before they were signed by the Shandon Annex People. That contract was drawn and held up by the people for [fol. 358] several months before they would accept it as a contract, and the Shandon Annex people would not sign the contract until it was agreeable with the Street Railway Company. They did afterwards sign it after holding it up for several months.

Q. Did the Street Car Company afterwards operate that line into Shandon Annex from King Street?

A. They did. Their idea of that contract was, on account——

Q. What was the purpose of it?

Mr. Lepine: We object to the purpose. That is a conclusion of the witness.

The Court: I sustain your objection.

Mr. Cordie Paige: This is the intendant, the mayor of the Town of Shandon, and he is attempting to make an explanation of the purpose that they had in mind in passing this ordinance.

The Court: Doesn't the ordinance speak for itself?

Mr. Paige: The ordinance speaks for itself as to what it did. If the ordinance did not do what they intended, then the witness speaks. We submit that the purpose may be stated and then the Court will say whether the ordinance did carry out the purpose. The ordinance of course speaks for itself as to what it does, and what was done at that time, we earnestly submit that the witness has a right to state the purpose of council in passing the ordinance—that that is competent evidence.

Mr. LePine: If they can do that, they—just as well call members of the Legislature to prove what was meant by the passage of the Act of 1925.

Mr. Belser: I think I can connect it up.

Q. Tell us what was the purpose in the passage of this ordinance?

[fol. 359] A. The original line up to Millwood Avenue was the only line at that time in Shandon. When the Shandon Annex people applied for a right of way through King Street, the Shandon Annex Line was about seven blocks from the end of the line, from where it branched off the original line. We felt that after this line was built to the Annex the Street Car Company would not operate a fifteen minute schedule on the line from King Street to the end of the line, but, that there would be a fifteen minute schedule from King Street to the City of Columbia, one car going to the Annex and the other car going to Millwood Avenue or Garner's Ferry Road. The ordinance was drawn on that account.

Q. Do you know whether the Street Car Company was advised of the purpose and the object of the passage of this ordinance and whether they willingly agreed to it, or whether they objected to it?

Mr. Le Pine: I object to the witness's understanding—let him state of his own knowledge.

Q. Did any of the street care people have any connection with this matter?

A. We had no transaction with anybody except the Shandon Annex people, but we had the transaction with them that whatever transaction we had with them must be satisfactory to the Columbia Railway, Gas & Electric Company or Columbia Street Railway, Power and Light Company.

Q. That was the understanding of the people of Shandon?

A. Yes.

Mr. Le Pine: We object to the understanding.

The Court: We want to keep away from opinions and understandings of the witness and get down to what actually took place, as far as we can.

Q. Who did you deal with in connection with this matter?

[fol. 360] A. We dealt with Mr. Ravenel and Mr. Moore, I think.

Q. They represented the Shandon Annex Company?

A. Yes, sir.

Q. Mr. Sumter Moore?

A. Yes, sir.

Q. Who was the Attorney for the Town of Shandon at that time?

A. Mr. Shand. Mr. Robert W. Shand. Mr. Shand drew the ordinance.

I want to offer at this time contract between Columbia Electric Street Railway, Light and Power Company to Columbia Land and Investment Company.

Mr. Lyles: In addition to the other objections, there were a series of contracts terminating that deed, and we respectfully submit that, if they are going to offer any of the agreements, they must offer all together.

The Court: We want to get it all in.

Contract above referred to introduced in evidence and marked Exhibit No. 23.

Q. You know that Columbia Land and Investment Company, with whom this contract that I have just handed you here was drawn, developed the town of Shandon, didn't they?

A. They did.

Q. The property which you own goes back to the Columbia Land and Investment Company?

A. It was a part of their property.

Q. This contract calls for a schedule of not less than one car an hour for a period of ninety-nine years between the hours of 7:30 A. M. and 8:00 P. M. daily. This contract is signed by Mr. Robert W. Shand. Did Mr. Shand advise you in reference to your property you purchased that you were entitled to anything under the contract with this company?

The Court: I don't think I would ask that question.

[fol. 361] Mr. Belser: We want to establish that this witness, along with others, is a beneficiary of this contract.

The Court: How would a statement made by Mr. Shand have anything to do with it? What relation did Mr. Shand have?

Mr. Belser: He was President of this company—Columbia Land and Investment Company.

Mr. Lyles: Here is an agreement that is dated in September, 1902. The agreement itself provides that the party of the second part, which was the then Street Railway Company, may at any time during the continuance of this lease purchase (Continues argument). We submit that it would be a legal impossibility for that contract, under those circumstances and the actual transactions under it to be for the benefit of certain persons, under the rule.

Mr. Belser: We differ entirely from that.

The Court: I will consider those objections.

Q. You own property which came from Mr. Shand's Company?

A. Yes.

Q. What did he tell you about a contract requiring the people to operate cars?

A. He told me he had a contract with these people, and the cars would be operated.

Q. Was the presence of the car line considered a valuable feature in connection with the purchase of that property out there?

A. It was to me.

Q. One of the inducements for the purchase of the property?

A. Yes, sir.

Q. This property that formerly belonged to Columbia Land and Development Company was afterwards incorporated as Town of Shandon?

A. Yes, sir.

[fol. 362] Q. When you were Mayor in 1910 and along in there, all this line of railway referred to in this contract was within the Town of Shandon?

A. Yes, sir.

Q. You know this line along King Street, we are talking about, that goes in Dr. Burney's property and into Shandon?

A. Yes, sir.

Q. Do the poles out there run right along the side of the track out there?

A. Yes, sir.

Q. Do you know if those poles are still out there?

A. They are.

Q. Are they being used for the purpose of carrying electric wires?

A. That, I don't know. I am under the impression they are, but I don't know that to be a fact.

Q. Is there anything else that you know in connection with this matter that you think proper?

A. No.

Q. Do you know when the Town of Shandon came into the City of Columbia?

A. I don't remember the exact date, it was about four years after I went out as intendant.

Q. About 1915, 16, 17 or 18?

A. Along in there some time—I don't remember.

Q. Do you remember when the Town of Shandon was incorporated?

A. About twenty-two years ago—between twenty-two and twenty-three years ago.

Cross-examination.

By Mr. Lyles:

Q. When did you buy your house?

[fol. 363] A. About twenty-three years ago. I bought the lot.

Q. That would be about 1905?

A. About that time. I don't know the exact date.

Mr. Lyles: I want to cross examine this witness on the same matter we objected to as being incompetent. I will not waive my objection to it?

The Court: No, indeed.

Q. When did you have these conversations with Mr. Shand?

A. I had a conversation with Mr. Shand practically every day or every two or three days. He was out there all the time. He was our attorney for the little town. We went to him with all our troubles.

Q. Did you have your conversation with him with reference to the contract that the Columbia Land and Investment Company had with the Railway Company, at the time you purchased your lot as a representative of the company, or did you have your conversation with him in his capacity as attorney for the town?

A. I had it before I went out there.

Q. What did Mr. Shand tell you in that conversation?

A. He said the Columbia Land and Investment Company had a contract for the Street Railway Company to operate cars from town to the town of Shandon.

Q. He didn't tell you how long the contract was to continue?

A. He did not.

Q. Before you went out there the track was already there?

A. The track was there where I bought my lot.

Q. That is the track that runs down what we call Divine Street?

A. Yes, sir.

Q. It ran out, at that time, to what you would call Millwood Avenue?

[fol. 364] A. Yes, sir; to Maple.

Q. Turned down Maple and went to Millwood Avenue?

A. Yes, sir.

Q. Is that the line that went to the Orphanage?

A. That was not the original line that went to the Orphanage. The original line went out Divine Street about two blocks to the rear of the Orphanage. Then they took the track up on Divine and transferred property to people that wished it on the street car line.

Q. When was the street car line originally built out there?

A. I don't remember.

Q. It was built about 1900 or 1901 or about that time?

A. I don't remember exactly the time.

Q. When did you say the town of Shandon was incorporated?

A. It was incorporated, I would say, about 1904 or '05. We didn't have enough people to get incorporated——

Q. The entry in the book is 1905 is that correct?

A. Yes, sir; that is about right. I think Col. Brooks was intendant at that time.

Q. I see a meeting of October 14th, 1903, meeting of the democratic voters at Shandon, held at the residence of H. A. Butler, October 14th, 1903 for the purpose of selecting a name. It must have been incorporated in 1903 or '04?

A. It was incorporated about the time I went out there. It might have been a little ahead of it.

Q. These entries will indicate it was in 1903, wouldn't it? About March, 1904 was the election?

A. I couldn't say. I suppose the entries are correct.

Q. Didn't you bring this book here as correct?

A. The time I was intendant.

[fol. 365] Q. When you passed this ordinance in 1910—at that time the Shandon Annex line was a distinct and separate line from the line that went out Divine Street, and went as you described, wasn't it?

A. It was until it was completed.

Q. Will you step up here a minute. This is the Shandon Annex line I am indicating here?

A. That is the line.

Q. This line coming from the City of Columbia and running along Divine Street is the line that was out there originally?

A. No, this is the original line (indicating). This line did originally stop about here (indicating), but that was torn up and this was the original line.

Q. Is this Millwood Avenue here (indicating)?

A. Yes, sir.

Q. Outside of a temporary outside construction of the original line out to here and subsequently tearing it out and putting it here, this is the original Shandon line, and that is the one you speak of as running out Divine Street?

A. Yes.

Q. Before the passage of this ordinance, the Street Railway had that line and was operating before the Town was incorporated?

A. Yes, sir; it was.

Q. This is the only ordinance you find relating to the operation of street cars out by the Town of Shandon, isn't it?

A. This ordinance that we drew, you mean?

Q. Yes, sir.

A. That is the only one I know of.

Q. Then the street railway had a fifteen minutes schedule in effect?

[fol. 366] A. They did at that time.

Q. I mean at the time of the adoption of this ordinance in 1910?

A. Yes; they had at that time.

Q. They had previous to that time?

A. I don't know how long previous to that.

Q. Hadn't they had the fifteen minute schedule in effect ever since you bought a lot in 1905?

A. They had.

Q. They had a schedule in effect at least five years prior to the passage of this ordinance?

A. They had for some time.

Q. Didn't you have it in effect when you bought your house?

A. They had it when I built my house.

Q. When did you buy your place?

A. About twenty-three years ago.

Q. You bought in 1905?

A. About that; I don't remember the exact date.

Q. When did you pass the ordinance?

A. The date is on the book.

Q. Isn't it 1910?

A. I don't remember the date. The date is on the ordinance.

Q. The 12th day of July, 1910. Then, answer me, please, whether the street car company had not had a fifteen minutes schedule in effect on the line which you speak of as the original Shandon lines five years before the passage of the ordinance?

A. We did not question the fifteen minute schedule until after the line to Shandon Annex was built.

Q. I am asking you if they had not had a fifteen minutes [fol. 367] schedule on the original line for at least five years before they passed the ordinance?

A. Yes; they had.

Q. How long after you passed the ordinance did they keep the fifteen minutes schedule in effect on the original Shandon Line?

A. Until we came into the City of Columbia, and I don't know how long after that. It was sometime after that, but I don't remember how long, but I know they did for sometime.

Q. Do you recall when you came into the city?

A. No, I do not.

Q. Your information concerning this matter came from Mr. Ravenel and Mr. Moore?

A. They had charge of the Shandon Annex Company.

Q. They were officers of that company?

A. Yes, sir.

Q. All you know about the dealings with the street railway company in connection with that line and in connection with this ordinance was what Mr. Moore and Mr. Ravenel told you?

A. The operating of the line.

Q. I mean this ordinance that you talk about. You have testified, Mr. Scott, that you had no dealings yourself with any officer of the street railway?

A. No, I didn't have any dealings with them.

Q. Your information about the ordinance came through Mr. Moore or Mr. Ravenel?

A. Came through them.

Q. Didn't you say there was a long delay for the reasons that they told you they were having a hard time getting the street railway company to accept the ordinance?

A. They didn't accept it. I don't know what kind of [fol. 368] time they were having. They didn't accept it for two or three months, I would say.

Q. The ordinance is dated the 12th day of July, and on the first of August they wrote the letter of acceptance?

A. It might have been a month—I don't remember the exact time.

Q. As a matter of fact it was only nineteen days?

A. They would not do any work—we would not allow them to do any work on King Street until they got permission to build, and they were ready to build when they came to us.

Q. You got no information from Mr. R. W. Shand about this matter, except as the attorney for the Town?

A. He was Attorney for the Town, and he handled all of our law matters. He was also an officer of the Shandon Annex Company—I mean he was an officer of Columbia Land and Investment Company—he was President of Columbia Land and Investment Company.

Q. He had no connection with the Street Railway Company?

A. None that I know of.

Redirect examination.

By Mr. Belser:

Q. You are willing for any rights you have against the Street Railway Company to be enforced by the Attorney General?

A. Yes, sir.

Recross-examination:

Q. Did they consult you about bringing this suit before it was brought? This lawsuit?

A. I don't know anything about the lawsuit, Mr. Lyles. I had refused to sign paving petitions on my street, and would not be willing to have anything done there until the matter was settled as to whether the City was going to force the Railway Company to operate cars. I consider a [fol. 369] car line is more favorable to my property than I do paved streets.

Mr. Lyles: That is not in response to my question—the latter part of his answer.

Dr. S. C. Bird, sworn.

Direct examination.

By Mr. Belser:

Q. Doctor, you are the President, I believe, of Chicora College for Women?

A. I am and Secretary and Treasurer of the Board of Trustees of Chicora College.

Q. You have joined in this proceeding to require the street car service to be restored?

A. Yes.

Q. You bought for the college a good many acres of land from Dr. Burney for the purpose of constructing a new site and permanent home for your college?

A. We did.

Q. What relation has it to the Street Car track that runs through Dr. Burney's property?

A. It faces King Street on which the Street car line runs.

Q. What effect on the value did you give to the fact that you had street car transportation there, in purchasing the property?

Mr. Lyles: We object. That is irrelevant.

The Court: Assuming that it would be connected up, it might be competent, so I will admit it.

Mr. Lyles: We ask for the deed for the best evidence of the consideration.

The Court: Technically, if it gets to the matter of consideration, unless it is contractual, they can prove it outside.

[fol. 370] Mr. Lyles: Would Your Honor rule the objection goes through the testimony.

Witness: The fact of adequate and suitable transportation to any site for a college was a very material consideration. The board would not consider purchasing any site for the college where adequate and suitable transportation was not guaranteed.

Q. When you bought this property from Dr. Burney, what consideration did the college pay for it?

A. One Hundred Sixty-nine Thousand Two Hundred ($169,200.00) Dollars.

Q. Was the street car line being operated there at that time?

A. It was.

Q. By what concern?

A. By the company that operated the system in the City here.

Q. Would you come here and point out to the Referee the portion of this property where you bought—this being Divine Street and this being King Street here?

A. Beginning about 190 feet from there, we bought this entire tract, with the exception of 190 feet here, and 430 feet facing on Wheat Street.

Q. How many young ladies do you have in your college?

A. We have an enrollment of boarders of 192. We planned when we get through to accommodate as many as three or four hundred.

Q. Do you regard the street car as the best and safest way to serve your institution?

A. I do.

Cross-examination.

By Mr. Lyles:

[fol. 371] Q. Doctor, you do not claim your company paid any money to the street car company?

A. No, sir.

Q. You do not claim you sought an officer of the company before you selected a site for the college?

A. No, sir; we acted on good faith that the company would operate the cars.

Q. Whose was the good faith?

A. The company that was operating the street cars.

Q. Whose was the good faith? They did not tell you that, did they?

A. No.

Q. The good faith you are speaking of is not based on any statement the officer of the company made?

A. No.

Q. Did you verify this intervention petition for Chicora College?

A. I would have to see it.

Q. You understood that there was a paper filed bearing your signature? You remember swearing to what you call an intervention petition filed on behalf of your college?

A. I remember a paper filed by us, but whether that was the proper title of it, I do not know.

Q. Do you remember swearing to it?

A. I remember being in the attorney's office and signing a paper. I do not recall taking an oath at present.

Q. Did you consult your board of trustees before you signed this paper?

A. The official Board?

Q. Yes, sir?

A. Let me see the paper, Mr. Lyles. (Witness looks over the petition.) No, the official board was not con-[fol. 372] sulted. That is personal testimony and not the testimony of the board.

Q. The paper is filed on behalf of your college?

A. By me as President of the College.

Q. Do you consider you had authority to do that?

A. I do.

Q. How did you happen to sign this paper?

A. As President of the College.

Q. Who first brought it to your attention?

A. The matter was first brought to my attention by the newspapers.

Q. I mean the matter of signing that paper that you signed?

A. The papers were prepared by the attorneys of the petitioners in the case, and we, being a petitioner, of course the signing of the paper was at the request of the attorneys.

Q. You were invited in, the water was fine, come on in?

A. No, I would not say that. We were one of the petitioners. The college was effected by the case, and we entered in as one of the petitioners.

Q. You were very careful, of course, about your statements in here as to the accuracy of them?

A. I thought they were accurate, according to my information at the time, as they are set forth there and the affidavit.

Q. You say in your affidavit—you saw the heading of the paper, that it was against Broad River Power Company and Columbia Railway Gas & Electric Company?

A. I assume I did.

Q. They were named as respondents?

[fol. 373] A. I assume that I saw that. I didn't notice that so carefully.

Q. You bought that property in 1921?

A. Yes, sir.

Q. You know, as a matter of fact, that the Broad River Power Company was not even incorporated until 1924?

A. I don't know when they were incorporated.

Q. Suppose you read paragraph four?

A. (Witness does so.)

Q. Tell us when the Broad River Power Company was incorporated, if you are familiar with it?

A. This states the petitioner is familiar with the allegations contained in the main petition and informed and believes that the said allegations are true and correct. There is no statement of fact. It is a statement of belief on information.

Q. When you say you are familiar with the allegations contained in the main petition, you didn't mean that?

A. I meant I was familiar in a general way with the allegations.

Q. Don't you think it is an important matter in this case when the Broad River Power Company came into existence?

A. I don't know. I may have judgment on it if I considered it, but I have not considered whether it is important or not.

Q. You do not know that there is an allegation in the main petition that the Broad River Power Company was incorporated about 1924?

A. I have a general impression that it was incorporated about four years ago.

Q. You know that the Broad River Power Company was not here in 1921?

[fol. 374] A. It was not here in 1921.

Q. When you allege in the petition that you bought property in 1921 and that one of the considerations moving you to purchase the property was the fact that the property was situate there on the street car line belonging to the companies—you did not mean both companies? You did not mean what you said?

A. Yes. We meant at the time we bought it that later it was transferred to the other and both companies, we thought, were involved.

Q. You say in the petition when you bought the property in 1921—I am asking you— you are testifying here on your oath, who the street car line belonged to?

A. I understood that it belonged to the Columbia Railway, Gas and Electric Company.

Q. You know that the Broad River Power Company was not incorporated?

A. That is my impression, until later.

Q. When you make the statement in your petition that the street car line belonged to both companies in 1921, you stated something you know to be incorrect, or that was inadvertent on your part?

A. My impression is I made no such statement.

Q. Suppose you look at it and see if you did?

A. (Witness reads over petition.) I think that is a correct statement, because the consideration there was it belonged at one time to one company and then at the time that affidavit was made to the other company, and so in the period under consideration it belonged to both companies.

Q. You are also familiar with the allegations of the main petition?

A. In general.

[fol. 375] Q. Don't you know the main petition alleges that the Columbia Railway, Gas & Electric Company conveyed the gas and electric property to the Broad River Power Company?

A. In general.

Q. There has never been any contention advanced that they conveyed the street railway property?

A. I know in general. The details of that transaction I do not know.

Q. Your knowledge of that transaction came from where?

A. Largely from the newspapers.

Q. Have you ever examined the records?

A. No, sir.

Q. You do not attempt to speak authoritatively on that subject?

A. No, sir.

Q. I was asking you the source of your information—was that information acquired from newspapers?

A. Largely and general conversations in the City with business men.

Q. You never discussed the matter with any officers of the company?

A. No, sir.

Q. Your property has not been developed?

A. In part.

Q. How far has the development gone?

A. We have expended $170,000.00.

Q. Have you built a college?

A. We have built part of the college. We have built the foundation and professor's residences for the college.

Q. What are the prospects of the college being completed?

A. I can't state officially. If we had the money in hand, we would proceed immediately, if the matter of transporta-

[fol. 376] tion and other matters which are essential to an institution were settled.

Q. You have spent $170,000.00, and yet you want to say—didn't you tell these people that you were going to build the college?

A. That we expected to build a college.

Q. You didn't return any subscriptions?

A. We have not abandoned the project.

Q. I am asking you if you did?

A. No, we did not.

Q. If you had the money to complete the college, wouldn't you go ahead and complete it?

A. That is a debated question among the board now.

Q. What would be your disposition of the money that people gave you?

A. That would be a matter for the board to decide.

Q. Have you got any immediate certainty that you are going to get the money?

A. No certainty.

Q. It is purely problematical as to whether you will get the money in the future?

A. I would not say problematical. It is not a certainty.

Q. When did you first start the building out there?

A. I think it was in 1923, though I would have to verify that date.

Q. You spent $170,000.00?

A. We spent on the purchase price and in buildings around $170,000.00.

Q. Did your deed from Dr. Burney contain any written statement from him or any guarantee from him that street cars would be run out there by anybody?

A. I don't recall. I would have to refresh my memory [fol. 377] from the deed. The deed will speak for itself.

Q. Have you any written agreement—did you require any written agreements from Dr. Burney that street car service would be continued?

A. No, sir.

Q. You saw the street car track there?

A. Not only the track—they were in operation.

Q. You saw the street car track and you say street cars were running and you rode on them?

A. Yes, sir.

Q. Street cars were running on good schedules and service was all right?

A. It was satisfactory.

Q. Tell me, man to man, if you didn't just assume that street car service would be continued?

A. It was assumed. So far as any contract, there was no such contract.

Q. Did you have a contract with Dr. Burney?

A. We had no special contract with Dr. Burney.

Q. You know, as a matter of fact that Dr. Burney's deed did not contain anything about street cars continuing?

A. Not as a matter of fact, but my opinion is it did not.

Redirect examination:

Q. Did Dr. Burney discuss with you this contract he had with the Street Car Company?

A. Yes, sir.

Mr. Lyles: We object to that.

BRUCE W. RAVENEL, sworn.

Direct examination.

By Mr. Belser:

Q. You are now a resident of the City here, and engaged in the insurance business?

[fol. 378] A. Yes, sir.

Q. You were for a long time an officer of the Shandon Annex Company?

A. Yes.

Q. Probably from the time of organization down to the last few years?

A. Yes.

Q. Do you recall this contract that is already marked in evidence that was entered into between the Shandon Annex Company and the Street Car Company and also the contract with Dr. Burney?

A. Yes, sir.

Q. We have already introduced in evidence this letter dated December 21st, 1910—have you had an opportunity to look over that letter? That is your signature?

A. Yes, sir.

Q. In a general sort of way, was the object of these contracts to provide transportation for Shandon Annex Company?

A. Yes.

Q. That is down on the south end of Shandon, isn't it?

A. Southeast Columbia.

Q. Your company carried out your share of this contract, didn't you?

A. Yes, sir.

Mr. Lyles: I presume it is understood that the same objections to the other testimony along this line apply to the testimony of this witness.

The Court: Yes.

Q. After the Columbia Railway——

Mr. Lyles (interrupting): I also object to the testimony of the witness as to his conclusion that he carried out his [fol. 379] part of the contract. I think that should be by statements of fact.

The Court: Yes, sir. That is more like an allegation in general terms. That wouldn't be sufficient proof.

Q. After this—take this contract and hold it—the Company built the line, as I understand it—the Street Car Company?

A. Yes.

Q. They did the actual construction work. Your Company and Dr. Burney provided the funds which was to pay for the work?

A. Yes.

Mr. Lyles: I object to the method of examining the witness. There is no contract between Dr. Burney and the Street Railway as all. Counsel says did he and Dr. Burney pay for the work, when his contract was with the Street Railway and his contract with them?

The Court: I think you had better ask the questions in a less leading way.

Q. With whom did you place the money for disbursement to the street car company?

A. I think that letter says it was placed with Mr. Mahon.

Q. Do you happen to recall whether Mr. Mahon was a Director of the Street Railway?

A. I do not.

Q. I notice that paragraph two of this contract with the Street Car Company provides that the line was to run

through the property of Dr. W. B. Burney—you did afterwards have the line afterwards run through his property?

A. Yes.

Q. What did you have to do in order to get the consent of Dr. Burney to run the line through his property?

A. I don't know that there was any effort on our part. [fol. 380] He was probably as anxious to have it as we were.

Q. What did you do then with reference to making a contract with Dr. Burney with reference to getting permission to go through his property?

A. It has been so long ago that I don't remember the details that we followed.

Q. I call your attention here to this letter and the statement attached to it in connection with paragraph five of the contract with the Street Car Company to the effect that the company would pay in cash Twenty-five Hundred Dollars—did you carry out that part of the contract?

A. As well as I remember, we did.

Q. Look on the statement, and I think you will see where it refers to that payment?

A. (Witness does so.) Cost of operation, Twenty-five Hundred Dollars.

Q. The street Car Company did the actual building?

A. Yes, sir.

Q. I notice that paragraph nine of this contract provides that this contract shall be open for acceptance up to and including June 30th, 1910? After which the contract should be null and void. I notice the contract with Dr. Burney is dated June 30th, 1910—do you know whether this paragraph had relation to making arrangements with Dr. Burney or not?

A. I don't know what that related to. I suppose it was our acceptance of this contract.

Q. There has also been introduced in evidence the letter of Shandon and the ordinance of the Town of Shandon granting the right to your company to operate—have you seen this?

A. No, I hav-n't.

Q. Here is a letter addressed to Town of Shandon by Mr. J. S. Moore?

[fol. 381] A. Yes.

Q. It appears on page 136 of this book, and on the next page is the ordinance and on the next page is the letter

from your company signed by -ou saying you accept the contract. Can you say whether or not you submitted this contract and the ordinance to the street car company before accepting and finally writing that letter to the Town of Shandon?

A. I imagine we did.

Q. With whom were you dealing on behalf of the Street Car Company?

A. I think Mr. Dustin, the General Manager at that time.

Q. Did your company *except* to do the actual operation?

A. No, the Street Car Company.

Q. Can you say whether or not you advised the Street Car Company of your contract which you entered into with Dr. Burney for him to put up his share of the money?

A. I couldn't say whether we told them or not. They were looking to us for the money. It was no concern of theirs where the money came from.

Q. The line called for, however, was to go through Dr. Burney's property?

A. Yes.

Q. The contract between your company and Dr. Burney, I notice says: "In consideration of the foregoing, a certain contract in writing heretofore made about the 30th day of May, 1910, entered into between first party and Columbia Street Railway Light and Power Company"—what contract were you referring to—was it this same contract?

A. I would think so.

Q. Do you know that is the contract, or not? Did you have any other contract with the Street Car Company?

A. No. Only for that line out there.

[fol. 382] Q. Would you say that was the contract?

A. I would think so.

Q. Lets take up the Suburban Transit Company. You were an officer also of the Suburban Transit Company?

A. My recollection is I was.

Q. The Suburban Transit Company was what? What relation did it bear to the Suburban Homes Company?

A. I think we organized the company for the construction of two railroad lines.

Q. What was the Suburban Homes Company doing?

A. They owned the property out there known as Colonial Heights.

Q. Will you mind locating it on this map?

A. Right here (indicating).

Q. It organized the Suburban Transit Company?

A. Yes, sir.

Q. Those connection with that company were interested in the Suburban Transit Company?

A. Yes. Shandon Annex Company and this were two separate organizations.

Q. This line that was built by the Suburban Transit Company—State whether that was for the purpose of furnishing transportation for the purchasers of lots out there?

A. Yes; that is what it was for.

Q. Did the Suburban Transit Company build that line and operate it for a while?

A. They did not do any actual operation themselves. The Street Railway Company operated it.

Q. I notice that there are certain sections of the ordinances of the City referring to, and regulating Suburban Transit Company. Are you familiar with those?

A. No, I am not. I may have been, but I don't remember them.

[fol. 383] Q. Look at section- 608 and 612 and see if that seems to apply to your company?

A. It looks like that is the company.

Q. What did you do, or your company do, with reference to operating, or accepting those provisions of the ordinances?

A. The line was operated—so I suppose we must have accepted their ordinance.

Q. Some years after that—this was about 1807 and 1908—when you organized the Suburban Transit Company?

A. Probably so—about that time. It has been a long time ago.

Q. Did your company—what did it do, if anything, with reference to selling out these lots here? Did you sell out the lots up there?

A. Yes.

Q. After the street car line was in operation?

A. Before and after.

Q. Do you recall what your contracts, as a general proposition called for with reference to the street car service out there? What terms of conditions you had? What guarantee to have a street car line in there with in a certain time after the lots were sold.

Mr. Lyles: We think the contracts would be the best evidence.

The Court: Yes.

Q. Will you look and see if you can find a contract?

A. Yes.

Q. What, if any, advantage was it to the developers of the property and the people who bought out there?

A. We expected it to benefit sales greatly.

[fol. 384] Q. After some years your company transferred all of that line to the Street Car Company, didn't you?

A. That one that run to Colonial Heights.

Q. That is the copy of the deed by which your company transferred all of this line to the Street Car Company?

A. Yes.

Q. After that, did the Suburban Transit Company do any operation?

A. It only built these two lines.

Deed from the Suburban Transit Company to the Columbia Railway Gas and Electric Company, dated the 13th day of June, 1912, recorded the 17th day of June, 1912, in Deed Book BA at page 393, introduced in evidence and marked Exhibit No. 24.

Q. Did you have anything to do with selling the property of Suburban Transit Company?

A. No more than the others who were interested in it.

Q. Can you state, or recall, whether or not you advised the prospective home purchasers that your company would see that they had street car service?

A. My recollection is to guarantee that the line would be built into the property.

Mr. Lyles: I understand that testimony will be subject to the production of the contract.

Q. Has the Suburban Homes Company sold out its lots in that section? How many people live out there now?

A. I don't know how many are there now. I have not been connected with the company in two or three years.

Q. Had the company sold out all its property?

A. No.

Q. Have they still some more property out there?

A. I suppose they have.

[fol. 385] Q. About how many?

A. I don't know. There must be seventy-five or more homes in the property now, I should think.

Q. You sold out a great deal of property in Shandon Annex Company?

A. Yes, sir.

Q. While the street car line was in operation?

A. Yes; before and after.

Q. About how many people did you sell lots to out there, do you recall?

A. No.

Q. Have you any idea how many people live out in that section?

A. No, I have not. It has built up quite a good deal since I got out of that company too.

Q. How much property did they have originally?

A. We bought about eighty acres out there.

Q. Have they any left?

A. I don't believe they have.

Q. Shandon Annex Comany is in bankruptcy?

A. Yes.

Q. Do you know who controls it?

A. I think Mr. Frank Withers is the representative of Mr. Gonzales and owner of the company.

Q. They operated the line out to Colonial Heights how long?

A. I think they operated it several years—up until we sold it out to them.

Q. When did they stop operating?

A. I imagine when all the cars stopped.

Q. About how long did they operate the line at Shandon Annex?

A. I imagine about the same time.

[fol. 386] Q. Do you know whether the Broad River Power Company is making use of the poles along the streets?

A. No, sir; I do not.

Cross-examination.

By Mr. McLain:

Q. The line that was built by Shandon Annex Company is still in existence?

A. The physical part of the line?

Q. The rails, overhead trolleys and poles too?

A. I imagine it is.

Q. Have you been out there recently?

A. Not very recently.

Q. You don't know whether it is still there or not?

A. No.

Q. Didn't the Shandon Annex line stop some months before all service in the City stopped?

A. It might have. I don't know.

Q. You don't know whether it was permitted to discontinue by order of the Railroad Commission some year or more before certain other lines were permitted to discontinue?

A. No.

Q. Do you recall whether or not you made a deal with the street railway line for a thirty foot right of way for the street railway?

A. I do not.

Q. This Suburban Transit Company—did the Transit Company operate this line for a short while?

A. I don't think it ever operated it at all. It had no facilities for doing it.

Q. That line is still in existence?

A. Which one? The Shandon Annex?

Q. Suburban Transit line?

[fol. 387] A. I think that company built both of them. I think they built the Colonial Heights Line and Shandon Annex Line too.

Q. The one I have in mind is starting at Bull and goes out to Colonial Heights—that track is still there, isn't it?

A. So far as I know.

Q. What other line were you speaking of?

A. The line through the Burney property.

Q. The Suburban Transit Company built that also?

A. I think it did.

Q. This line that is out there now is the same line that Columbia Railway, Gas & Electric Company operated after it got it from the Suburban Transit Company?

A. Yes.

Q. That line was built as you say according to your statement to purchasers that it would be built?

A. Yes.

Redirect examination:

Q. You state you thought the Suburban Transit Company built both lines. Doesn't Mr. Moore sign something for the Suburban Transit Company? Look and see. It says "The Street Car Company will do the building"?

A. The Street Car Company did the building. I am not sure that they built both lines or not.

Q. Speaking about the line to Colonial Heights now, for example, can you state whether they have some rails that they took over in 1907?

A. It may be. I don't know. I know it is pretty bumpy.

Q. Can you state whether or not they are using the same cross ties for example that were used in this with it was built?

[fol. 388] Q. I can't state about that.

Q. The same poles?

A. Maybe.

Mrs. S. Y. Riddle sworn.

Direct examination.

By Mr. Belser:

Q. What is your present occupation, Mrs. Riddle?

A. My present occupation varies from what it was before the street cars were taken off. My occupation depends wholly on the transportation. Up until July and August I dealt wholly in real estate and insurance. I am now supervisor for the Business home for women.

Q. Where did you previously live?

A. In 1908 I bought lots from the North Columbia Land Company through M. W. Mason as Agent.

Q. What representations did Mr. Mason, on behalf of the North Columbia Land Company, make to you with reference to the street car service.

Mr. Lyles: We want to repeat our objections—particularly to the res inter alios acta. I understand it will continue to all the testimony of the witness.

The Court: All right.

Q. What representations did he make to you as to the street car service?

A. He assured us we would have street car service in perpetuity. He said North Columbia Land Company had a contract with the Street Car Company and that they would have street car service in perpetuity. He said there would be a fifteen minute schedule when the lots sold off enough to put on a fifteen minute schedule.

Q. What effect did those representations have on the purchase of your property?

[fol. 389] A. It had everything to do, because if I had not had the street car transportation I had no way to get in and out of town. Being a business woman I had to come every day.

Q. Will you come up here and show me where your property is situated?

A. My property—my first property is over here, down to here we own now (indicating on the map). I had seven sisters and all invested out there. I owned to that first street there first.

Q. From what streets now?

A. Clarendon, Albemarle down to Craven and on to the next one there, whatever that is. I lived at that place from 1908 to 1913 or 14. I moved there in front of Columbia College. Then I became real estate agent for F. H. Hyatt and had exclusive agency for College Heights until his death.

Q. What connection did Mr. Hyatt have with North Columbia Land Company?

A. He signs as President.

Q. Do you know anything about it?

A. He told me when I hired to him as agent that that property belonged to him, and that the North Columbia Land Company and he had bought and sold to the railway company their rights and interest, and they guaranteed them street cars in perpetuity.

Q. Mr. Hyatt had a great deal of property out in that section during those periods?

A. Yes.

We introduce this copy of deed from the Hyatt Improvement Company to the Columbia Electric Street Railway, Light and Power Company (the copy produced by counsel for the respondents).

Marked Exhibit No. 25.

[fol. 390] The Court: Admitted subject to the same objections.

Q. Mrs. Riddle, you say you were employed by Mr. Hyatt to sell his property out there, around there in that section?

A. Yes, sir.

Q. What representations did he authorize you to make, and what did you make with reference to selling property?

A. I guaranteed that under Mr. Hyatt's contract, I said all lots on the street car—I sold all lots there for a $100.00 to three hundred dollars higher than lots that were not on the street car.

Q. On that account?

A. Yes, sir.

Q. About how much property did you dispose of in that section?

A. I sold anywhere from seventy-five to one hundred lots, and I build about eight homes. I have three of my own tied up out there.

Q. Are you willing for the Attorney General in this proceeding to enforce whatever rights you have?

A. I certainly am.

Q. What effect has the failure to have street car service in that neighborhood had on property values.

A. Everything. It run me away from home, and several others moved away on account of not having transportation. I have my three houses rented for barely enough to meet the insurance on them.

Q. How has it effected the convenience of people out there?

A. We have to start to walking and take the chance on getting a ride in.

Cross-examination.

By Mr. Lyles:

Q. Did you say you sold two of your lots out there?

A. I sold three lots and a big nine room home.

[fol. 391] Q. Was that before the street car stopped?

A. That was way years ago. The first home I had I sold seven or eight or nine years ago.

Q. That conversation you had with Mr. Mason?

A. With Mr. Mason.

Q. Mr. F. H. Hyatt?

A. Yes.

Q. Mr. Mason was sales agent for the North Columbia Land Company?

A. Yes.

Q. Mr. Hyatt's statement was with reference to his own property and contract with the Street Car Company and himself. You didn't see the contract yourself?

A. No, sir; I did not.

Q. You didn't see the contract with Mr. Mason?

A. No, but I saw and abstract of the lots.

Q. Was the contract mentioned in your deeds?

A. No, I don't think it was necessary for that to be in my deeds.

Q. It was not in your deeds?

A. No, sir.

Q. You didn't put that in the deeds that you got from Mr. Hyatt, did you?

A. I had no right to change the deeds to the property and to insert anything.

Q. You say you sold some property for Mr. Hyatt?

A. Yes.

Q. You had deeds prepared, or he had them prepared?

A. He had them prepared—the forms he furnished.

Q. You used the ordinary printed form and wrote in the description of the property?

A. Yes.

[fol. 392] Q. You did not insist on his writing in there the contract with the Street railway?

A. No.

Q. You never saw anyone of those deeds that mentioned any contract about a street car?

A. Mr. Hyatt told me he had a contract direct with the street car company.

Q. Have you ever seen it—have you ever seen a deed that said anything about a contract with the street car company?

A. No, sir.

Q. You know as a matter of fact, as a business woman of considerable experience, there is not a deed on record in this County that has a word in it about a contract with reference to the street car company?

A. I couldn't swear to anything like that. I couldn't swear it wasn't in my contract. It may be in mine.

Q. With your intelligence and interest in the matter, you would have found it?

A. If I had been looking for it I would have saw it.

Q. When did you quit working for Mr. Mason?

A. I never did sell for Mr. Mason.

Q. During what period of time did you sell with Mr. Hyatt?

A. From 1913 to his death.

Q. Didn't Mr. Hyatt die a good many years ago?

A. Yes, sir.

Q. When was it?

A. I don't remember when he died—several years ago though.

Q. In those days the street cars were running out there?

A. Yes.

Q. Did Mr. Mason tell you that the contract that the Land Company had with the Street Car Company called [fol. 393] for a fifteen minute schedule?

A. No, sir.

Q. What was it you said about that?

A. We only had a thirty minute or hour schedule, but he said as soon as the population grew to justify it, the street car company, they would put on a fifteen minute schedule, and that is what we had to look forward to.

Q. You reasonably understood that the street car company was out to make business pay, certainly?

A. Certainly, and we patronized them enough for them to know that.

Q. You would naturally expect, as a business woman, if people are there to ride every five minutes, a car would be put on?

A. No, I think five minutes would be unreasonable.
Q. I mean like New York?
A. I never did visualize that far.
Q. Did Mr. Hyatt tell you he had a contract?
A. Yes, sir.
Q. He told you he had a contract?
A. I don't know whether he said he personally had one, or whether the North Columbia Land Company. He said they had a contract with this street car company.
Q. That is the contract you are talking about?
A. That is what we were buhing under and were influenced by.

Redirect examination.

Q. I notice that the contract between North Columbia Land Company and the Street Car Company, which is signed by Mr. Hyatt, does contain a provision that the company will operate on a convenient and reasonable schedule of not less than one hour and as much more as traffic will warrant?
[fol. 394] A. Yes, sir.
Q. Did he show you that contract?
A. No, but he told me that was the contract he had with the street car company.

Dr. A. C. Moore, sworn.

Direct examination.

By Mr. Belser:

Q. Doctor, I believe you are Chairman of the Columbia School Board?
A. Yes, sir.
Q. About how many children are there in the schools in the City of Columbia—do you happen to know?
A. There are somewhere in the neighborhood of between five and six thousand in the white schools and about three to four thousand in the colored.
Q. About nine thousand pupils?
A. Yes, sir.
Q. Do you regard the street car service as in any way desirable from the standpoint of the school children of this City?

Mr. Lyles: Will you continue our objection as to this witness?

The Court: Yes, sir.

Witness: Yes, we regard that as very essential to the proper conduct of the schools.

Q. How are the schools located?

A. We have one Central High School. That is, of course, remote from certain quarters of the City. Therefore, we regard street car service as particularly essential. We regard the street car as much the more desirable form of transportation. The other schools are located as nearly as possible in the center of the school population and most [fol. 395] of the children would be within walking distance, though in some of those the distance is great enough to justify transportation.

Q. Where is the Columbia High School? Come here and indicate on this map?

A. That is located on the corner of Washington and Marion.

Q. How far distance from the car line?

A. The nearest would be the car line on Main Street. The next would be Gervais.

Q. That high school is for what?

A. The convenience of the whole city.

Q. The Junior High School?

A. Elmwood Avenue and Park Avenue—on this block here (indicating on the map).

Q. What portion of the City of Columbia is supposed to attend that Junior High School there?

A. We have another Junior High School at Heathwood. There are about one hundred and seventy-five or two hundred attending Heathwood, and about two Hundred at Wardlaw School. All the children from this region on Harden Street attend the Wardlaw Junior High.

Q. How many students are there in the Columbia Central High School?

A. I think approximately Nine Hundred now.

Q. About how many in the Junior High School on Elmwood Avenue?

A. Between seven and eight hundred in the Wardlaw School.

Q. For what reason do you regard street cars as the most desirable transportation for the City?

A. I think the Street cars, when they run on schedule are essential because they have a definite schedule, and children can count on the hour of departure from any par-
[fol. 396] ticular point and arrival here at school. Then, I think they are safer than any other form of transportation, and busses have been used for transportation and are used in may rural schools. Many parents object to busses, crowding all the children in busses without supervision. Street cars furnish much more desirable transportation for school children.

Q. Where is the Logan School?

A. On Elmwood Avenue—just about two blocks west of the Wardlaw School.

Q. Is that on a street car line?

A. Yes.

Q. Where is Taylor School?

A. Just in the rear of Bull and Laurel Streets.

Q. Is it on a street car line?

A. At Laurel. The Bull Street line is about two blocks away. There was a line going out Blanding Street to Bull —the street car goes by the corner.

Q. Where is the McMaster School?

A. It is on Pickens Street, about a block from Gervais, on which there is a line located.

Cross-examination.

By Mr. McLain:

Q. Did the School Board recently buy busses to convey children to school?

A. No.

Q. You had that question up?

A. Had that up. There may have been one or two members of the Board favorable to the purchase of busses, but there were some members of the Board that did not favor the purchase of busses under any circumstances.

Q. Do you know how many children ride on the street
[fol. 397] cars or rather rode on the street cars before they were discontinued?

A. No, I do not.

Q. Do you know how many would now use street cars if they were still running?

A. No, I do not.

Q. Your idea is that it is a very essential thing for the schools—your statement would have to be revised somewhat unless you know to what extent they would be patronized?

A. I know that children now are using all sorts of means of getting to school. Perhaps some of them are walking when they would have ridden and many others are being picked up. I know it has been the custom for residents out in Shandon neighborhood to pick up children going to school. That is a sort of haphazard way of getting to school. I have seen children standing on the corner and picked them up when I came by.

Q. They picked them up when the street cars were running?

A. Yes, sir; I think so.

Q. Every since the street car strike in '22 it has been a custom of we Columbians to pick up anybody walking?

A. I think so.

Q. Was the Junior High School street car stopped?

Q. No, the Junior High School was not.

Q. When the contract was let and the building commenced?

A. The street cars were in operation.

Q. Wasn't the street cars on Elmwood stopped in 1926?

A. I don't think so.

Q. You are quite positive the street cars were running to the Cemetery?

A. I am not at all positive. I don't know when they were [fol. 398] discontinued.

Q. Street cars were running in Columbia?

A. I don't know about that.

Q. You didn't place it up there with any idea of children attend- the school would be served by street cars, that is the Junior High School?

A. No, no more than street car line was there, and we beli-ved that if they were operated they would be operated there.

Q. You mean the track is there?

A. The track is there. We feel more assurance that children would be transported better there than if we had located it off where there were no tracks.

Q. If I should call your attention to the order of the railroad commission No. 331, dated June 8th, 1926, which authorized the discontinuance of the Waverly and Shandon Annex Line, Union Station to the Fair Grounds, Elmwood Line and Hampton Avenue Line, you would still say that street cars were running past Junior High School?

A. If that is the documentary evidence, I would not accept it.

Q. There were quite a few of your gentlemen on the Board who had a hill to pull?

A. Yes.

Q. Some protesting that you were locating the school out of the school population?

A. That is a fact.

Redirect examination.

By Mr. Edmunds:

Q. How far is Wardlaw School from Main Street?

A. Three blocks. Just about two blocks.

Q. The cars were continuing to go up Main Street, were they not?

[fol. 399] A. They were.

Recross-examination:

Q. Those cars were only going from Eau Claire, Ridgewood and North Columbia, were they not?

A. I will have to depend upon the documentary evidence you have rather than my own knowledge.

Q. The children from Colonial Heights and College Place do not attend Junior High?

A. No, they were not.

Q. You wouldn't pick up many on Main Street between Gervais to Pendleton for your Junior High School?

A. Out the Shandon Line?

Q. Yes, sir; there are not many adjacent to that street?

A. No.

Dr. E. O. Watson, sworn.

Direct examination.

By Mr. Belser:

Q. You are now connected with the Southern Christian Advocate?

A. Yes, sir; I am editor of it.

Q. You are a minister of the Methodist Episcopal Conference?

A. I am.

Q. For many years you were on the Board of Trustees of Columbia College?

A. I became a member of the Board in 1895 and became Chairman in 1900 and remained Chairman until I resigned sometime after going to Washington in December, 1918 or November, 1918.

Q. What connection, if any, did you have with the location of Columbia College, where it is now located?

A. For some years before, I became chairman of the [fol. 400] Board. There was continual feeling and discussion that we needed to develop a larger plan than we had on what is now the old Colonial Hotel, and we didn't have grounds sufficient. We attempted to buy grounds back of the property. Failing to do that, when I was Chairman in 1900, action was taken by the Conference, with a Committee of three or four others, to visit the places which made propositions to us for the removal of the College, and our instructions were to remove from Columbia to some other point adjacent to Columbia.

Q. What finally induced you and your committee to accept the location where the College now is?

A. In connection with those actions, Mr. Hyatt, and I went out and looked over what is now College Place, where Columbia College is now located, and he made a definite proposition to me then.

Mr. Lyles: I want to be sure the same objections extend to all the testimony of this witness.

The Court: Yes, sir.

Witness: He then made certain propositions, which were later put into formal shape, and which I submitted, as President of the Board of Trustees, to the South Carolina

Annual Conference, and in that way a definite guarantee on his part——

Mr. Lyles: If that was in writing, that would be the best evidence.

Witness: I have in evidence, I have the files, the minutes of the South Carolina Conference, which does not contain, of course, the original document. I can testify as to having seen and handled the original document. I can testify that, having been Secretary of the South Carolina Conference for thirty years, I can testify to the accuracy of the record here.

[fol. 401] Mr. Lyles: I don't know about that.

The Court: Where would the original record be?

Witness: That original record was placed in my hands as Chairman of the Board of Trustees, and by me turned over to the Board of Trustees, whose records were kept in the safe of the College. The College was later burned, and the probabilities are that that record was destroyed. I have not been able to get it.

The Court: I am inclined to think that is sufficient.

Mr. Belser: If he can testify of his own knowledge as to a search; if he made a search where the record is supposed to be, that would account for the loss of the original.

Witness: I can't testify about any personal search having been made by me.

The Court: Could you testify that the records were destroyed in the fire?

A. No, sir; I couldn't testify to that.

Mr. Belser: I have requested Dr. Guiles to make the search, and he advises me that he has not been able to locate the paper.

Q. You have there the minutes of the Conference showing how the proposal was summarized, hav-n't you?

A. Yes.

Q. Will you just say what it says there about the offer made by Hyatt?

A. "At the Session of the Annual Conference——

Q. What minute is this from?

A. I will get to that.

"At the Session of the South Carolina Conference, held at Greenville, South Carolina, December 11th, 1903, E. O.

Watson, President of the Board of Trustees, presented the following: 'To the South Carolina Conference; In behalf of [fol. 402] the Board of Trustees of the Columbia Female College, I beg to report to the Conference that, pursuant to the action at the last Session of the Conference, directing that the Columbia Female College be enlarged, improved and that not less than Fifty Thousand Dollars be raised for this purpose, we have been doing all we could to get this movement under way. Dr. James A. Duncan has been secured by the Board to canvass the State in the interest of the College. Recently a proposition has been made concerning the removal of the College to a desirable site in the suburbs of Columbia. This proposition was presented last night to the Board of Trustees, and the following was unanimously adopted: 'First, that the Board tenders its thanks to Mr. F. H. Hyatt and those associated with him for the very generous proposition made for the removal of Columbia Female College to the suburbs of Columbia;

Second, That the President of this Board is hereby authorized to formulate and present to the Conference a paper embodying the offer made and asking that the Board of Trustees of the Columbia Female College be authorized and empowered to act with plenary powers as to said proposition. Pursuant to this resolution of the Board I present the following summary of the proposition made by Mr. F. H. Hyatt and others; Mr. Hyatt offers first twenty acres of land in the Suburbs of Columbia on an ideal site with privilege of water supply from the springs and streams on his property adjoining that offered; Second, that the Street Car Company of Columbia will put tracks to the site, and that the Seaboard Air Line road, running a mile beyond the site there, will put in a station and such tracks there for Five Thousand Dollars in cash. In addition, F. H. Hyatt and W. J. Manley guarantee a subscription list to purchase of not less than [fol. 403] Five Thousand Dollars, and F. H. Hyatt and L. D. Wallace guarantee the sale of the present property owned by the College and in the City of Columbia for not less than Thirty Thousand Dollars.

E. O. Watson, President of Board of Trustees.' ''

Resolutions grew out of that and were adopted by the conference at that time.

Q. Was that accepted or not?

A. That was accepted.

Q. Was the college located there in pursuance of that?

A. The college was located in pursuance of this offer.

Q. Do you know whether or not Mr. Hyatt himself organized a company and built the street car line on out to the college after it was organized there?

A. I know that Mr. Hyatt, in order to connect the lines, built and operated a line to the college. My recollection is it was drawn by mules for the time being. He considered that an absolute guarantee on his part.

Q. Do you happen to recall whether that was the line which was covered by this deed from Hyatt Improvement Company, that we have introduced in evidence? The deed itself shows that it contains the line?

A. I only know that the line operated from Hyatt's Park on out to the College connected with the regular street car service.

Q. What year was it this offer was made.

A. 1903.

Q. The College was erected there during the next year or so?

A. During the next two years. The minutes go on to show the reports I made to the conference with reference to the progress.

[fol. 404] Q. Look at the opening of this contract with North Columbia Land Company, and you will see that this contract with North Columbia Land Company addressed to Columbia Street Railway, Light and Power Company, referring to the proposed extension of the line of the street railway of the Hyatt Improvement Company and the operation of the same "North Columbia Land Company hereby submits the following proposition: That the Columbia Railway Light and Power Company will build and construct an extension of the line at Hyatt Park, etc." Do you recall when the line was built from the Columbia College on out to North Columbia?

A. Nothing very definite. I know that was partially developed after the college was placed out there. When I looked at the place, it was an old field with sassafrass sprouts on it. There was only one house in sight.

Q. I want to call your attention to the fact that this contract is dated on the 24th of August, 1906 and these deeds

from the Hyatt Improvement Company and Mr. F. H. Hyatt to the Street Car Company are dated in October, 1906, and ask whether or not from that period in the fall of 1906, whether or not the street car company continued to operate the street cars until very recently?

A. During all the time of my residence in Columbia and my connection with the Columbia College, up to the close of 1918, since which time I have lived in Washington and have had no absolute knowledge, I can say at least until 1920, that was true. I couldn't testify of my own personal knowledge whether they were running on schedule regularly.

Q. After a year or so the line out there was continuously operated by the Street Car Company?

A. Continued service and satisfying service, so far as I know.

[fol. 405] Q. What is your opinion as to the desirability of street car service, from the standpoint of the Columbia College?

A. This is merely an opinion, but it is an opinion of one so directly interested in it that if I had an opposite opinion I would have carried it the way I wanted. I never would have thought for a moment considering moving that far out without the assurance that we were going to have street car service out there, because I consider that the only desirable mode of transportation for a group of young ladies coming and going to all parts of the State. I don't consider taxis, I don't consider jitneys, and I don't consider busses as having the safeguard street cars have to the public. We can't afford to have girls coming in at the depot at eleven o'clock at night and running the risk of a jitney driver getting them, and the Lord only knowing where they are going. The street car safeguards that. I can give you some illustrations, if they were permissible, that will illustrate exactly my meaning. I came up from Orangeburg ——

Mr. Lyles: We catch the meaning of Doctor's statement without any illustrations.

Witness: I imagine you can intelligently see it without my giving you the concrete illustration.

Mr. Belser: It seems to me that, in view of the very great importance of the question at issue, we would like

to ask that Dr. Watson be permitted to go ahead with his illustration.

The Court: Of course, I will permit it.

Witness: I got on the train in Orangeburg last fall, after the street cars had ceased service. A mother, who had been a life-long friend and acquaintance, had her daughter at the train to go to Columbia College. She had been home over the week end. She saw me through the window and ran [fol. 406] and said "Do, please take care of our child. I felt we could hardly let her go, because there was no transportation in Columbia." I got here in Columbia the time the train arrives from Charleston, on Sunday night. I think it is half past ten, approximately that, and found nobody knew she was coming otherwise than her father was going to bring her back, and she had to be cared for. The street car could have been arranged for, but that simply illustrates the fact that that father or mother would have taken the daughter out of school rather than risk any of that sort of mix-up. That is only one of the hundreds of such cases.

Cross-examination.

By Mr. Lyles:

Q. Do you know how many students they have at Columbia College?

A. I think 334.

Q. How many did they have last year?

A. I really couldn't tell you. I am not now connected with the Board of Trustees of Columbia College.

Q. How many do they have at Winthrop?

A. Something like eighteen hundred or two thousand.

Q. They turn down a good many too?

A. I can't say.

Q. The general report is they turn down several hundred to one thousand students?

A. Yes. I know Winthrop College is second or third of any female college in the United States.

Q. They haven't street cars in Rock Hill?

A. They have different conditions.

Q. They are some distance from the railroad station? About a mile. This is five and possibly six or seven though.

Q. What would you think would be the difference between [fol. 407] a railroad car and a motor bus, involving the safety and protection of these young ladies?

A. The difference would not be as great as if there was a regular service of a motor bus under a reputable company. That difference is by no means as great as the risk—

Q. What would be the difference, so far as the safety and protection of a young lady—what would be the difference as between a motor bus with one driver, and an electric street car with one driver? Would there be any there?

A. No material difference. Yet there is that little shade of difference that sometimes makes all the difference between moral risk and moral safety.

Q. Wherein would that difference lie in the two cases I have given you?

A. In the fact that, so far as my observation goes, bus companies have never had that degree of permanence, character and reputation that belongs to the established order of things with the Street Car Companies. They are more permanent, and the bus companies are more "fly-by-night companies.

Q. Aren't there some pretty well established and pretty responsible bus companies in the cities throughout the country?

A. I presume so. I have very little personal knowledge.

Q. Don't you travel a little?

A. A little. I have been outside of Columbia.

Q. Don't you see busses operating in places other than Columbia?

A. Yes; I have been where I have seen two-story and three story-busses in Washington.

Q. Have you ever seen busses around on Fifth Avenue in New York?

A. No.

Q. Why should there be any difference between the pro- [fol. 408] tection that the driver of a bus would afford a young lady and that which the driver of an electric car would afford a young lady—assuming the same care and caution were used in the selection of the two men?

A. In the first place your examination goes a little further than I have been able to testify. I have declined to

have members of my family take the bus in the lines in South Carolina since I have been here for the reason that I have not any assurance or experience with that business, and I myself have never taken a bus in South Carolina, except when there was no other available transportation to be found. I will take the railroad every time or hire a taxi. The accidents that are likely to happen with a bus driver are so much greater than the accidents of a street car or railroad.

Q. You can't tell us how many students were out at the Columbia College last year?

A. Three hundred or more.

Q. Do you know whether they had more this year than they did last year?

A. I can't say positively. I rather — than they have a few more.

W. M. Addison, sworn.

Direct examination:

Q. You are a resident of the subdivision of Equ Claire, known as Colonial Heights?

A. Yes, sir.

Q. What is your business?

A. Life insurance.

Q. Up until the last election, you were one of the Councilmen for the Town of Eau Claire?

A. Yes, sir.

[fol. 409] Q. When did you buy your property out in the Town of Eau Claire?

A. About 1910 or 1911—possibly as early as 1909. That is the first property I bought. I bought some since.

Q. When you bought that property did you take over a contract for a lot out there?

A. Yes, sir; I bought my property from Mr. Townsend, who had recently bought from Suburban Home Company.

Q. Have you been able to locate your contract?

A. No, sir; my contract was burned when my residence burned a few years ago.

Q. Did that contract have a provision in it about street car service?

A. Yes, sir.

Q. What was the substance of it?

A. It had to do with the street car service.

Mr. Lyles: Your Honor understands our objection goes to the testimony of this witness.

The Court: Yes, sir.

Witness: The contract given to Mr. J. C. Townsend, I took over his contract, which was a contract to pay for the property by the month. Further down it had a paragraph dealing with street car service. Just the wording of that paragraph I would be unable to give.

Q. What was the substance of it?

A. They were to——

Mr. Lyles: I don't think that testimony is competent outside of the other objections because I don't think the man should undertake to give his understand- of the effect of a contract which he cannot produce. It seems to me to repeat the contract is going to- far afield.

The Court: Subject to your other objections, I will of [fol. 410] course let him state it. He ought to try to state as near as he can what the contract said.

Witness: The contract said they would give us street car service within one year from the sale of the lots at the beginning of the sales of these lots owned by Suburban Home Company, and that the fare would never exceed five cents.

Q. Do you have electricity out there?

A. Yes, sir.

Q. Does the Broad River Power Company—do you pay the Broad River Power Company for your lights?

A. Yes, sir.

Q. Do they make use of those poles for carrying their electric wires that run along opposite the street car track to Colonial Heights?

A. Yes, sir.

Q. Are those the same poles that used to carry the trolley wires when the street car was running?

A. Yes, sir.

Q. Do they carry the trolley wires now?

A. Yes, sir; mocking birds may have cut some of them in half, but part of them is there.

Q. This same line runs out to the State Hospital field and the public highway, doesn't it?

A. Yes, sir. Following the road until it gets to Colonial Heights property and into the property some five or seven blocks.

Q. Are those poles right out along the side or the middle of the street?

A. When it gets there in Colonial Heights it is on the side of the streets.

Q. How many homes are in that community? How many people live out there?

[fol. 411] A. I should think we have three hundred homes. I may be mistaken. I haven't counted them, I should think three or four hundred homes.

Q. How many people live out there approximately?

A. I should think we have well over one thousand or twelve hundred. Colonial Heights, we call Colonial Heights that part which is not Eau Claire—just across the road is in Eau Claire. I don't know whether you would call that Colonial Heights or not. There is families living within fifteen or twenty feet of the street car line, and in the City Line, and I don't know whether they would be in Eau Claire or not.

Q. What effect has the discontinuance of the street car service had on property there?

A. Decreased the value very materially.

Q. Are the people well to do people?

A. No, sir; we have a very poor people in that neighborhood.

Q. Are they amply provided with automobiles?

A. No, sir; there are a great many people who have automobiles. I only have one car—and having three children that depend on street car service, I am pretty hard hit myself.

Q. Something has been said in the return to the effect that there was a lot of competition from busses which helped to run the street car company out of business? Who was the manager of the Broad River Power Company and the Street Car Company for the last year or two of its operations?

A. Mr. Woodring.

Q. Did you have any dealings with him?

A. On several occasions Mr. Woodring and I would go over in Eau Claire.

[fol. 412] Q. You were councilman at that time?

A. Yes, sir.

Q. What, if anything did Mr. Woodring say to you with reference to suggesting that the Town of Eau Claire allow the busses to run through the Town of Eau Claire?

A. Mr. Woodring and I drove over the town looking over the streets and poles and looking into some improvements that he had promised us. I told him then that I would be glad if he would improve the service, that we would stand by him and keep busses out of Eau Claire, because we were afraid of the busses and we were going to stand by the street car as long as possible. Mr. Woodring told me that he would be glad if we would let the busses come in. I was very much surprised. I thought he would encourage me in my encouragement to him. When he said go ahead and let the busses come, I was surprised.

Q. What did he tell you about competition being the life of trade?

A. He said, if he was in my place, he would let them come. That competition was the life of trade.

Q. Did Mr. Woodring say anything to you about whether the line in that section, out in Eau Claire or Colonial Heights, whether they were good paying lines?

A. Mr. Woodring told me on several occasions that the Colonial Heights Line was the best paying line in the City, and he told me on another time that, if we would make certain kicks to the Railroad Commission, we would be benefitting ourselves, because the three lines that pass through our town, Ridgewood, College Place and Colonial Heights, could be run on indefinitely all the time if he was allowed to stop certain other cars that were not paying. He said that our lines were paying, but at that time our lines were [fol. 413] having to bear part of the running expense of certain other lines in the City. He thought it behooved us as citizens to protest to the Railroad Commission when the Railroad Commission has been asked to force the street car company to restore service that had been discontinued, and if that kept effect, or if the street car company could be allowed to discontinue certain lines, we could have our lines indefinitely, because they were paying.

Q. About when was that?

A. I would have to guess at that, but I am sure it was—I am sure it was about the spring or summer of 1926, because it was eight or ten months before the street cars quit running out our way. It was about May, 1926—I remember now that it was then.

Q. What, if anything did your council do with reference to allowing busses to operate in there?

A. We kept the busses out. We kept the busses out until about 1927—the first part of 1927.

Q. Did he induce any of your citizens to come up and assist in the effort to get the Railroad Commission to free the company from operating some of the lines?

A. Yes, sir; quite a number of us.

Q. Went up on the strength of what he said?

A. Yes. sir.

Q. They got released?

A. They got released from certain lines.

Q. Was Mr. Woodring here when they discontinued the street cars entirely, or did he leave about that time?

A. I am unable to state, but I think he left before they discontinued. I am not sure when he left, but I think he left before the street cars were discontinued—about March, 1927.

[fol. 414] Q. Do you know where Mr. Woodring had his office?

A. Yes; down in the Arcade Building.

Q. What company has its offices there?

A. Office of the Broad River Power Company.

Cross-examination.

By Mr. McLain:

Q. You had no reason to disbelieve what Mr. Woodring told you—what you say he told you as to the lines out there being better patronized than the other lines of the City?

A. No, sir.

Q. You know as a matter of fact that those lines into North Columbia carried more passengers than certain other lines?

A. I don't know as a matter of fact. I certainly believed so by the figures I have seen.

Q. You did get service out in that territory for nearly a year after the other parts of the town were stopped?

A. It was some considerable length of time.

Q. It was from June to March?

A. I have forgotten how long.

Q. People are still buying lots and building houses out in that section?

A. We have very little building out there.

Q. Isn't there a lot of building going on?

A. Comparatively few buildings going up.

Q. There are some new houses out there?

A. It hasn't stopped, but very little building is going on.

Q. You ride in an automobile?

A. Most of the time.

Q. You did when the street cars were running?

A. Part of the time.

Q. Most of the time?

[fol. 415] A. Most of the time I ride in an automobile and my family has to walk. They don't get through with breakfast in time to ride with me.

Q. You eat ahead of them?

A. Yes, sir.

Q. Mr. Woodring, at the time he had the conversations which you testified to, was general manager of the Columbia Railway, Gas & Electric Company?

A. That is my belief.

Q. Also Manager of the Broad River Power Company?

A. Yes.

Q. He was talking to you about the street car service, the prospects of continuing it and the difficulties the company was in, wasn't he?

A. No, sir; I don't know that he discussed that with me much. We were not talking about that when I brought the questions up. We were then discussing some other parts of his business other than street car. We were discussing the removal of certain poles. When we come back out, finished our tour of the City about the poles, I approached him on the subject.

Q. These conversations in which he suggested that you people appear before the Railroad Commission and assist him in getting the permission of the Railroad Commission to discontinue certain lines, what about that?

A. We had been discussing that before I approached him on it.

Q. When he was talking to you about the street cars he was talking about street cars, and there is no argument about that?

A. No, sir.

Redirect examination:

Q. Are you personally willing for the Attorney General [fol. 416] to enforce in this proceeding whatever rights you have against the Broad River Power Company?

A. Yes, sir.

Q. Have you been in consultation with him from time to time before the suit was commenced?

A. Yes, sir; I spoke to the Attorney General before any action was taken by him. I have asked him to see that our rights were protected. In fact I called on him at least twice six months before any suit was brought.

Mr. Belser: If your Honor Pleases, we find ourselves in this position this morning; As we have indicated to your Honor, we would like to move to ask the Court to adjourn the reference for about a week or ten days. The Attorney General, who is the party plaintiff in the case on behalf of the State, finds that he will be necessarily engaged in the closing of the Legislature during the first part of the coming week. The Assistant Attorney General, Mr. Page, who is also associated as counsel for the petitioners, finds that he -as got to go to Washington in connection with a reference in the case of the Tax Commission against the Southern Railroad Company, involving some three or four hundred thousand dollars. We had hoped that we could conclude this case this week when it was set for Wednesday, but we were unable to get along as rapidly as we thought—in the first day being consumed with legal argument, and Thursday we had to go to Charleston. The Referee has also tentatively ruled out the testimony which we offered in evidence, which had been taken before the Railroad Commission. It was then, and is now our view that legally that evidence is competent—certainly as forming a basis for granting the relief by the Railroad Commission. Also it contains testimony from officers of the Broad River Power Company, which we think is competent as an [fol. 417] admission. However, the Referee has tentatively ruled out that evidence. For this and various other rea-

sons we would like to have an opportunity to put the case off for the coming week and for the purpose of gathering up our testimony to take care of the evidence taken before the Railroad Commission. We, therefore, move, and ask, that the Court adjourn the reference for a week or ten days, in its discretion, so far as the contention of the respondents is concerned, their witness-, who they say they subpœnaed from out of the City, it seems to us that they could be very rapidly advised not to come on Monday. We advised all counsel for the respondents yesterday evening that we would make such motion, and Mr. Lyles and Mr. McLain had that opportunity to countermand the attendence of out of town witnesses. We are also perfectly willing if they insist on it, to take the testimony of such witness as they have here, or such as they cannot conveniently stop, who come from out of the City. We ask your Honor to adjourn the case entirely for a week or ten days. A week will be sufficient, or in the alternative, to allow us to suspend and let the other side put in their evidence.

Mr. Lyles: In view of the fact that counsel has seen fit, in all propriety to state his position clearly to go into the record, I think we should do the same thing. We object, with the greatest respect, but with the greatest earnestness to any postponement of the reference, and also any departure from the ordinary course of procedure, and state that either course would substantially and materially prejudice the respondents that we represent. The reference was fixed for the 29th, is my recollection, without consultation with respondents or petitioners. We recognize, of course that the Referee in fixing that date did so under [fol. 418] his realization of his duties under the order of the Supreme Court, and that statement is not intended to be any criticism whatsoever of the Referee. The repondents immediately protested against the reference being fixed at that time, and did everything within their power to secure a hearing on their protest, but on account of the fact that the Supreme Court was in adjournment and that the Referee lived away from Columbia and being away from his office a great deal, we realize there was no possible way for such protest to be considered before the Reference convened on the 29th. Thereupon the reference proceeded, and the respondents called attention to the fact

that they had a number of witnesses from Pennsylvania and New York and requested that they be allowed until next Monday the 5th, to have these witnesses present, and the Referee granted that request, and instructed respondents, as we understand, to be ready with the witnesses. Arrangements have been made for the attendance of these witnesses. At least some of them are not connected with respondents. Arrangements have been made at considerable expense and inconvenience, and respondents state frankly, if the present arrangements are not carried through, it is impossible to state when they could secure the attendance of such witnesses.

In reference to the testimony before the Railroad Commission—it is my information that every witness who testified there, either lives in this vicinity and is subject to subpœna to appear on Monday, or will be present at the request of respondents on Monday. Under those circumstances, we earnestly request the Referee to proceed with the reference in due course, and we respectfully and emphatically state that we would be entirely unwilling to proceed with the taking of any evidence on our part until the [fol. 419] petitioners have closed their case, because we conceive that such procedure would be substantially and materially to our prejudice.

A number of our witnesses are non-residents. Our ability to secure their attendance is uncertain, and we want them when they come, we want them to testify in contravention to plaintiff's testimony. We doubt our ability to secure their attendance again if they once come and testify and then petitioners put in testimony. It is entirely impossible for us to know the extent of their testimony until plaintiffs have put in their testimony, so we oppose the motion.

The Court: The only concern the Referee has is each side will have the opportunity to present its testimony in full to the Court, so that when the case goes to the Supreme Court, the Supreme Court will have a complete record. The Referee requested counsel for the respondents to have their out of town witnesses here on Monday. It is true the Attorney General and Assistant Attorney General stated it would be inconvenient for them to be here next week. The Referee would hate very much to inconveni-

ence either of these gentlemen, but the other counsel for the petitioners are amply qualified to proceed with the case. The referee does not want to impose any undue hardship on either side, and will not lay down any rigid rules at this time. He is of opinion that the case should proceed in an orderly way—that petitioners should make out their case in full before respondents are required to put in their testimony. If the reference were adjourned until Tuesday, would that be of any advantage to you?

Mr. Belser: Yes, sir; I think it would. We think we are entitled to it. Of course we understand Your Honor's [fol. 420] position, and if you see fit to refuse it, we will go ahead and do the best we can, under the circumstances. We would like to have the benefit of the suggestion offered by counsel on the other side to arrange for the attendance of witnesses on Monday. I think Monday afternoon or Tuesday morning will suit me. We would like to have it postponed in accordance with our request. If Your Honor overrules that, we would like to have the benefit of their offer to have these witnesses here.

The Court: I am taking that into consideration. Counsel for respondents having stated that the witnesses who testified at the Railroad Commission, connected with respondent, would be present. I feel that we ought to go ahead but if it would be better to put it Tuesday, I would be willing to do that.

Mr. McLain: I am quite sure that we will be able to have every witness who testified before the Railroad Commission. There is one exception, Mr. Peterman, who lives outside the State.

Mr. Belser: Mr. Peterman is one of the witnesses who we are anxious to have.

Mr. Lyles: We would like for Mr. Belser to state what witnesses that he would expect to be here Monday. In other words, who he is counting on us having here.

Mr. Belser: I want all witnesses who testified before the Railroad Commission connected with Broad River Power Company. Mr. Costello, Mr. King, Mr. Peterman, Mr. Spence and Mr. Campbell. Those are the ones we refer to.

Dr. J. C. GUILDS sworn.

Direct examination.

By Mr. Belser:

Q. You are the President of Columbia College?

[fol. 420½] A. Yes, sir.

Q. Have been for several years?

A. This is my eighth year.

Q. Have you made a search in your records there to find if they had any agreement with Mr. Hyatt about the location of the College out in that Section?

A. Yes, sir; we have gone through the College vault out there where the permanent papers are kept, and we found nothing of that sort. The college plant was destroyed by fire in 1909, and I understand a good many records were destroyed. That happened before I came.

Q. What facilities for transportation back and forth to the City of Columbia were in force when you came to the College?

A. We had street cars.

Mr. Lyles: The same objection is made to all testimony of this witness.

Q. Did the students of the College out there patronize the street cars regularly?

A. Yes, sir; we have this arrangement that the students come into the City on Sundays to attend the various churches in the City, and they came in at the expense of the college. That is, we furnished transportation both ways and required church attendance on Sunday morning, and we used the street cars up to the time they were taken off.

Q. How do you regard the street car as to other forms of transportation around the City of Columbia as to desirability from the standpoint of your students?

A. I always feel a little safer when the students use the street cars.

Q. Why is that—what is the reason that you would prefer the street cars?

[fol. 421] A. I just regard it as a safer means of transportation for a crowd of college girls—that is just a personal opinion.

Mr. Lyles: I think that our objection is broad enough to include the question of opinion. I will ask that that be considered as part of the objection.

The Court: I will admit that at this time.

Q. What arrangement did you have with the Street Car Company for years about the girls coming into town on Sunday for Church?

A. The custom which I found and which continued up until we failed to make satisfactory arrangements was that on Sundays special cars came out and brought the students into church. The conductors counted the number coming in and going out, and billed the college for their transportation.

Q. Did you make that arrangement after the Broad River Power Company came into this community and acquired control of the properties?

A. We made no formal arrangements. It was just continued as it had been.

Q. When did that arrangement cease? Did you have any conference with Mr. Woodring with reference to it?

A. It was the fall before.

Q. 1926?

A. The way the thing came to stop was that we ordered the street cars out as usual to handle the students on Sunday.

Q. When was that, the fall of 1926?

A. The street cars were still running. We had been accustomed to paying seven cents for each girl—fourteen cents round trip. When the bill came in it was ten cents [fol. 422] each way, and so I came down to speak to Mr. Woodring about it.

Q. Where did you talk to him?

A. In his office. The college runs on a budget, and it made a difference of six cents on every girl for each Sunday, which would amount to a considerable sum of money in the course of the year. Some four or five hundred dollars, so I came to see him, and we discussed the matter. I said "we cannot afford to pay ten cents each way. We have no provision to take care of the extra cost, and we have made out year's budget on the basis of the fair we had been paying for some time," and he just said that they couldn't afford to haul the girls for less than ten cents each way.

Q. What did he say about whether he wanted to haul them at ten cents?

A. He went on to say, as a matter of fact, they didn't care for the business, even at that rate, and I smiled and said "it is pretty hard to do business with a man that does not want to do business with you." He said "I would be glad if you would make some other arrangements to handle the students." That was about the gist of our conversation.

Q. Then what other arrangement was it possible for you to make?

A. We took the matter up with the bus people and made arrangements for them.

Q. About how many girls did you have coming into town every Sunday?

A. Around two hundred every Sunday. That fluctuates some.

Q. Did he say anything about whether he wanted the company to quit operating or anything of that sort?

A. No, I don't recall that. He said he would be relieved if we would make other arrangements.

[fol. 423] Q. What arrangements did you prefer to make, whether the street car or the busses?

A. We preferred the street car and made no effort to arrange with the bus people until this happened. In fact I think I would have rather paid the street car seven cents instead of pay the bus the five cents.

Q. What office was Mr. Woodring in when you went to see him?

A. As I recall now, there is a central office as you enter where the stenographers stay and an office on the left and an office on the right. We went in the office on the right as you enter, I think.

Q. Are the forces of the Broad River Power Company, that handled the electric business, in that same building?

A. I understand they are across on the other side of the Arcade. As you enter the Arcade there on Washington Street I went in the office on the left hand side.

Q. Did you see the name of any company there?

A. I didn't look. I knew where Mr. Woodring's office was and went right on in.

Q. Do you know what connection, if any, he had with the Broad River Power Company?

A. I understand he was General Manager. I first mentioned this matter to Mr. Spence. I knew Mr. Spence and Mr. Woodring too, but we were members of the same club, and he said "you will have to take it up with Mr. Woodring," and I went to see him.

Q. Who was Mr. Spence? What connection did he have with the Street Car operations?

A. He was the man we ordered cars through. I think they called him Superintendent, or something like that.

Q. What was the condition of the railway facilities which [fol. 424] were afforded during the last year or two of the operations? Were they good or bad?

A. I will tell you the truth about it—I happen to have a Ford. I don't ride on the street cars much. There was some complaint from the girls and faculty that they were pretty rough, and they didn't regard them as being altogether safe.

Q. Who did you make arrangements with for the busses? With whom did you confer?

A. He has gone. I would know the name if I heard it.

Q. Mr. Hawkins?

A. Yes, sir; Mr. Chester Hawkins.

Q. What relation did he have with the Transit Company?

A. He was running it, as I understand it.

Q. Did you hear any of the estimony before the Railroad Commission?

A. No, sir.

Q. What effect, if any, does the absence of the street car transportation have on the convenience and desirability of your college for attendance of students?

A. I should think, if it is permanent, it will be very serious. Of course, now we are doing the best we can. If it is permanent, I think it wil injure the college seriously.

Q. With reference to coming into town to shop, etc., was it habitual for students to use the cars frequently?

A. Yes, I think Mr. Wooding said we were the biggest individual customer.

Cross-examination.

By Mr. Lyles:

Q. When you took up this matter of the ten cents fare for street car service, you took it up with Mr. Spence and Mr. Woodring—that was in he fall of 1926?

A. I guess it was. It was the fall before they stopped [fol. 425] operations.

Q. At that time, weren't they charging everybody else ten cents to ride on the street cars?

A. I think that was the individual fare, but since I had been there we had been paying seven cents.

Q. As a matter of fact, I think by an order of June 8th, 1926, the Railroad Commission increased the fare to ten cents, but you do know that other people were paying ten cents fare at that time?

A. I think that was the rate. They had, however, as I understood it a special rate for school children and pupils.

Mr. Lyles: I understood that counsel had put in all orders of the Railroad Commission. I call attention to this order of June 8th, 1926, in that connection, providing the new fare.

Q. What did you pay the busses?

A. Five cents each way—ten cents for the round trip.

Redirect examination:

Q. Did Mr. Woodring say anything to you further there than suggest that you make other arrangements—did he mention the busses?

A. No, I don't think the busses were mentioned. He said he would be relieved if we made any other plans.

Q. Were there any other plans for transportation other than busses?

A. I didn't know of any.

J. H. Keisler sworn.

Direct examination.

By Mr. Belser:

Q. Where do you live, Mr. Keisler?

A. Arden.

Q. How long have you been living there?

[fol. 426] A. In that territory about twenty years.

Q. From whom did you buy your property?

A. North Columbia Land Company.

Q. Who was the Agent?

A. Mr. Mason.

Q. How far off from the Street Car line did you buy?

A. I bought right on the line, and then on the other road.

Q. Where do you live?

A. Right on the car line.

Q. What effect, if any, did the street cars have on your buying?

Mr. Lyles: The same objection goes to all this testimony.

Witness: I never would have bought if there had not been street cars there.

Q. What did Mr. Mason advise you about the street car service?

A. He said it would always be there.

Q. Did he tell you any reason?

A. He said it was going to build up and be a city out there.

Q. Have you been one of the Councilmen or aldermen for that town out there?

A. Yes, sir.

Q. How many terms?

A. Three terms.

Q. Are you familiar with the street car track and the poles out there?

A. Yes, sir.

Q. Where do the poles that used to carry the trolley wires, where are they located with reference to the street car track?

A. Right on the track—right by the side of it.

[fol. 427] Q. The trolley wires are carried on those poles?

A. Yes, sir.

Q. What use is now being made of the poles?

A. Used for lights.

Q. Who runs those lights out there?

A. Broad River Power Company.

Q. Do those poles carry any electric wires for lights going into the homes along there?

A. Yes, sir.

Q. Broad River Power Company controls those too?

A. Yes, sir.

Q. Who keeps up the poles?

A. I always see the Broad River Power Company men on them I suppose they keep them up.

Q. How many people live, approximately, in the Town of Arden, do you know?

A. Really, I do not. I suppose there is five hundred right in that little place of Arden, I suppose five hundred.

Q. What effect does the absence of street cars have on the convenience of people living there?

A. We have no way of getting anywhere—no transportation. It effects us badly.

Q. What kind of service or what kind of patronage did the people give the street cars as long as they were running?

A. They rode the cars.

Q. What schedule did you have?

A. Every thirty minutes.

Q. Was the travel out there sufficient for that kind of schedule?

A. Yes, sir.

Q. Was it easy to get seats to ride on the street cars out there?

A. Sometimes you couldn't—it was crowded.

Q. What kind of service did the company give toward the last year or two of its operation?

[fol. 428] A. Last year or two it was pretty poor. The cars were worn out, it looked like to me—ladies were afraid to ride on them.

Q. How long a period did that type of service continue there?

A. I suppose the last year or two they were there.

Q. Do you happen to know whose employees operated the tracks and the street cars for the last year or two of their operations?

A. The same men that had been operating them all the time.

Q. Who made any repairs on the street cars or street car tracks?

A. I suppose it was the Broad River Power Company.

Q. They are the people who controlled the electric wires?

A. Yes, sir.

Mr. Lyles: We object to any supposition. We ask that that answer be stricken out on that ground.

The Court: That would be incompetent.

Q. Would the same man who looked after the wires and poles work on the track?

Mr. Lyles: The witness has testified that the same men who ran the street cars and kept up the street car track had always did it.

The Court: He would have to know of his own knowledge of course. I don't know whether he can answer that question or not. Unless he knows of his own knowledge.

Cross-examination.

By Mr. Lyles:

Q. Would you mind stepping up here a minute. I want you to look at this map. You say you are a member of the Town Council of Arden?

[fol. 429] A. I have been. I am not now.

Q. On this map here this circle indicates the Town Limits of Eau Claire—how do the City Limits of the Town of Arden run, the incorporated limits?

A. Here it is here (indicating on map).

Q. They join the Eau Claire limits right there at that point (Indicating)?

A. Yes, sir.

Q. The same line is the northern limits of the Town of Eau Claire and the southern limits of the Town or Arden for that distance right there (indicating)? For this distance here, the lines for the two towns are the same?

A. Same thing.

Q. Do you know what the area is within the Town of Arden?

A. I don't know.

Q. Do you think the line here, commencing there and running there and over there and back there, that that correctly represents the incorporated limits of the Town of Arden?

A. Yes, sir.

Q. It does not take in the Seaboard Air Line Railway?

A. The Seaboard is the line.

Q. Do you get taxes out of the Seaboard?

A. Oh, yes.

Q. Was the old Winnsboro Road the limit?

A. At one time. Now the road has been changed and brought in. The city limits line is between the two roads as it now stands. The hard surfaced road is within the Town and the old Winnsboro Road is without the town.

Mr. Belser: I don't think that is the competent way of proving the corporate limits of a town. The records would be the best evidence.

The Court: I think if he knows, he can testify to it.

[fol. 430] Q. In a Southeastern direction, do they extend beyond the Seaboard Air Line Railway?

A. No, sir.

Q. How far would you say the limits, taking what we would call northeasterly direction from the line that comes inside that line of the Town of Eau Claire? What would be that distance from here to here (indicating)?

A. About a mile.

Q. What is the total distance from the limits over on the northwest to the southeast?

A. I don't know.

Q. Give us an approximation?

A. Something over a mile, I think.

Q. Do you know how many people live within this total?

A. Four hundred and fifty to five hundred inside of Arden.

Q. This street car track, outside of the rails being kind of rusty and the ties being kind of worn out, it is just the same as it has been there all the time?

A. Yes, sir.

Q. That line was operated up until March of last year, wasn't it?

A. Yes, sir; March or April, I don't know.

Q. As a matter of fact, I think it was March 11th? You know, as a matter of fact that that was one of the last lines that were kept in operation by the Columbia Railway, Gas & Electric Company?

A. Yes, sir.

Q. The service out there was maintained up until the discontinuance on a thirty minute schedule?

A. Yes, sir.

Q. Can you tell us how long that thirty minute schedule had been in effect?

A. Ever since I knew it.

[fol. 431] Q. How long ago did you say that was?

A. Since 1908. We had a thirty minute schedule when I went there, and it run there all the time.

Q. You don't know how long before?

A. No.

Q. The service was satisfactory up until about a year before it stopped?

A. Yes, sir; about a year or two.

Q. The poles that Mr. Belser was asking you about and the wires—those are there today just in the some situation as they have been all along?

A. Yes, sir.

Q. There has been no chance in that physical property?

A. No, no change.

W. F. Cleveland sworn.

Direct examination.

By Mr. Belser:

Q. Mr. Cleveland, you are the Mayor of the Town of Eau Claire?

A. Yes, sir.

Q. Have you had any interest in this street car business? Did you make an application to the Attorney General to take some action in connection with the matter?

A. I did. I made a complaint with the railroad Commission when the cars were taken off, and of course, I have been trying to keep them running.

Q. How long have you been living out in that section? Where do you live?

A. Right on the car line, on the east side of Columbia College.

Q. How long you been living there?

A. I built a home there in 1913, but I bought this property in 1908, as well as I can remember. When I bought that property there was practically an old field out there,

[fol. 432] and I think there were two or three houses above me when I bought in 1908—not over a half a dozen.

Mr. Lyles: Will you rule that the objection to this testimony extends through this witness' testimony?

The Court: Yes, sir.

Witness: The cars, when I bought, were running to the gate, and they were putting down the tracks right in front of the property I bought, and it ran about two blocks above me, and I think that was in April or May, and a little later on they extended on out to the end of the car line, about a mile above my place.

Q. What is now the Town of Arden?

A. Yes, sir.

Q. Who did you buy your property from?

A. Mr. F. H. Hyatt.

Q. What did he say, if anything, about the transportation?

A. At that time I asked him this question. The fact that I had nothing but a horse and buggy and used that driving back and forth to the farm. I didn't come in only on week ends, and my family had no other transportation. I bought the property so I could send my girls to the College. In 1908 when I bought the property I asked what about the transportation "will this be permanent." He said "We have a contract and you will have no trouble about that." I saw the track there. In fact, I wouldn't have bought the property if the car track had not been there.

Q. About how far is your property from the business portion of the City of Columbia, Mr. Cleveland?

A. I think it is four miles, right along there about the college. The old mile rock on the old road is right across the field there.

Q. What kind of patronage did the people out there give to the street cars? Did they patronize them well, or not?

[fol. 433] Q. Yes, sir; it was the only transportation they had. The street cars were well patronized until the bus come in.

Q. What was the type of service that they gave you during the last year or two? Was it good service or bad?

A. They run every half hour. Of course the service was all right, only the cars run down, and needed a little repairing, but the service was all right. I preferred riding on them than the other cars, the busses or anything else. I think it is the only practical transportation for the suburbs.

Q. Were you present at the hearings, or some of them, before the Railroad Commission?

A. I think I attended—what it is—you mean the last one in regard to this?

Q. Yes, sir?

A. Yes, sir; I was down there. You mean the starting of this suit?

Q. Yes, sir; before the Railroad Commission when the company wanted to have the street cars discontinued?

A. Yes, sir.

Q. Did you hear Mr. Peterman testify there?

A. Yes, sir.

Q. Do you know who Mr. Peterman is? What connection he had with Broad River Power Company?

A. He said he was Secretary of the Broad River Power Company. I understood him to say Secretary and Treasurer.

Q. What did you hear him say, if anything, about whether or not his company, the Broad River Power Company, had gone to the White Motor Company and asked them to extend credit to the Carolina Transit Company, that was going to operate the busses?

A. As well as I remember, the Attorney General asked [fol. 434] him what interest they had in the busses, or how were they financing them, and, as I understood Mr. Peterman's testimony, he said that they asked the White Company to extend credit to this bus company to start the busses. I think you will find those words in his testimony there.

Q. Did you hear him say it yourself?

A. Yes, sir.

Q. The Carolina Transit Company, what were they doing? Operating Busses?

A. Operating Busses.

Q. What kind were they operating?

A. White trucks. Big White busses.

Q. White Company Busses?

A. They were White Busses.

Q. What, if any connection, did you hear Mr. Peterman say that the Broad River Power Company had with the Bus Company up in Spartanburg?

A. Mr. Belser, I don't remember the exact words what he said about that. There was something said about Hawkins representing them in running busses up there.

Q. Who was Mr. Hawkins?

A. He was in charge of the busses here. I can't tell you all that Mr. Peterman said.

Q. Do you recall whether or not Mr. Peterman said that the Spartanburg Company was paying Mr. Hawkins, who was operating those busses here, five hundred dollars a month?

A. Yes, sir; he said that—that is my recollection, and Hawkins told me that himself.

The Court: The statement of what Hawkins said would not be competent.

Mr. Edmunds: Taken in connection with what Peterman, the representative of the Broad River Power Com-
[fol. 435] pany said, it would be competent.

Q. You heard Mr. Peterman say himself that the Spartanburg Company—Did you hear Mr. Peterman say he was the head of Spartanburg Bus Company?

A. I don't remember.

Q. How long did the Bus Company operate out there in that section, and how did they operate in connection with the street cars?

A. The busses, after they put busses on, they sold tickets for fifteen fares for a dollar, and the street car company sold ten tickets for a dollar, naturally the people, everybody in that section being working people, railroad people, automobile people, clerks, bank clerks, bookkeepers, and so forth, they just went right on the busses. Naturally that cut off the revenue from the street car because they sold fifteen tickets for a dollar and the street car sold only ten. I didn't ride the bus until after the street cars were taken off. I beat my way around and finally I got on the bus and rode. They run the busses right ahead of the street car. When you would see a bus coming, you would know the street car was behind, but the bus was always in front. Of course they got all the traffic. Before these busses went on, the street

cars were patronized at six o'clock in the afternoon. I have stood up all the way out to the college. When they put the busses on they took advantage of the fare. I told them at the time they would be sorry the rest of their life.

Mr. Lyles: I object to that.

Q. Did you have any connection with the efforts of the Broad River Power Company in getting——

Mr. Lyles: I don't think counsel should ask his questions in that form.

[fol. 436] Q. How long have you been mayor out there?

A. I was mayor six years, and I retired four years and last September they re-elected me.

Q. You were not mayor when the Bus Company was trying to get permission to operate?

A. No, sir.

Q. Did you have any connection with the Bus Company or Broad River Power Company with reference to allowing the Bus Company to operate?

A. I had nothing to do with that. That was entirely through the officials of the Town.

Q. Are you willing for your rights in this matter to be handled by the Attorney General?

A. Yes, sir; that is the only way we had to do it. I feel like we are making a just fight, because it is the only transportation for the suburbs. I have tried them all.

Q. Do you know whether or not the poles running out there along the street car track are now being made use of?

A. The electric light wires are on those poles.

Q. What company controls those electric light wires?

A. The Broad River Power Company.

Q. They are the people to whom you pay your bills?

A. I pay my light bills to the Broad River Power Co.

Q. They use those same poles?

A. Yes, sir. I meant the City bill and the individual too.

Q. Do you know whose trucks were used to bring men out to work on the street cars—whether they were marked Broad River Power Company?

The Court: You must not lead him.

Q. Do you know whose wagons or trucks brought men out for the purpose of working on the street car track before the street cars were stopped?

A. They had a regular section force that worked that [fol. 437] track. The line keeping, keeping up the wires, the Broad River Power Company, as I understand it, the wagons are all marked Broad River Power Company, were used to transport the gentlemen back and forward to work on the wires.

Q. Do you happen to know whether or not the Broad River Power Company wagons transported the people out to work on the street car tracks before the cars were stopped?

Mr. Lyles: I object to the leading character of these questions.

The Court: Lets try to observe the rule about leading questions as far as we can.

Q. Can you tell us what companies' names, if any, was on the trucks or their wagons that brought the men out to work on the street car tracks during the last year or two of the street car service, since the Broad River Power Company came in here?

A. They have been using the same tracks they had when they came. They are using the same trucks that they used to have since they started.

Cross-examination.

By Mr. McLain:

Q. The busses had to leave too?

A. They did leave.

Q. They did leave?

A. Yes, sir; glad when they left.

Q. At the time they left, they had no competition from the street cars?

A. No, they put the street cars out of business.

Q. Nearly a year before the busses—You say the busses put the street cars out of business?

A. Yes, sir; I think so.

Q. Busses or jitneys?

[fol. 438] A. Busses. The jitneys never have bothered us much.

Q. You don't think the jitneys had any effect on the street car situation?

A. I don't say that, because I was in the midst of the fight when the strike came on there, and I tried my best to keep the jitneys out of there, because I felt like they weren't worth anything to our suburbs. I still say so, and unless I am forced to, I will never license one while I am mayor of the town.

Q. You say these street cars were packed at six o'clock?

A. They were before the busses were started.

Q. Six o'clock is the pack hour for the street cars?

A. That was the heaviest time.

Q. You also recall that the testimony before the Railroad Commission was taken down by a stenographer?

A. It ought to have been.

Q. They introduced testimony purporting to have been taken down by a stenographer?

A. Yes, sir.

Q. You wouldn't put your recollection of what Mr. Peterman stated up against what the stenographic record shows?

A. I heard him say that.

Q. Say what?

A. That is the testimony you got there.

Q. You heard him say what?

A. I am not going to lead myself, you ask me a question and I will answer that.

Q. You stated you heard Mr. Peterman say that?

A. I heard Mr. Peterman say that Broad River Power Company requested White Company to extend credit to the Bus Company, to get busses.

Q. That it was Broad River Power Company and no [fol. 439] other Company?

A. Broad River Power Company, that is what I understood, and I am convinced about it.

Q. You are equally convinced that he said Secretary and Treasurer?

A. That is the way I understood it. I don't know what you got on the record.

Redirect examination:

Q. Do you happen to know where Mr. Peterman had his office?

A. Yes, sir; Mr. Peterman's office was right in there with Mr. Woodring's, right in front on the right, and Mr. Woodring's on the left. It was all along in there together.

Q. What companies were they?

A. Offices of the Broad River Power Company. I have had a good deal of business with them. It has been very pleasant. Mr. Woodring and I didn't agree about the street cars, but we would jower around any way. I kept on his neck all the time. I felt like he was the man that done it.

Q. Did Mr. Woodring ever say anything about the lines out in that section being paying lines?

A. Mr. Woodring went before the Railroad Commission, I visited the Railroad Commission right often—Mr. Woodring told the Railroad Commission on one occasion a little while before they put the busses on that those lines were the only lines in the City paying, and three months after that—he said that before the Commission, and then he went back to the Commission and said the lines were not paying. I called his hand in the office and said "you have changed the tune—you come in the same color of a wasp and a yellow jacket, but it is the same tune."

[fol. 440] Q. What did he say about that?

A. He excused himself, and said he wanted to see another man in the room right away.

Recross-examination:

Q. Mr. Woodring was General Manager of the Street Railway Company?

A. He was Manager of the whole thing I thought.

Q. The street car company had its office in the same place?

A. They were all together.

Redirect examination:

Q. Did you see any signs or names up there?

A. No names. I just supposed that. I don't know how they transacted the business.

Recross-examination:

Q. No name of Broad River Power Company on the place where Mr. Woodring was in?

A. I think it is. I wouldn't swear to it though.

M. W. Mason sworn.

Direct examination:

Q. Mr. Mason, you are the Sales Agent for the North Columbia Land Company?

A. Yes, sir.

Q. How long have you been so?

A. Almost continuously for about twenty years.

Mr. Lyles: Will your Honor rule the same objection to the testimony of this witness?

The Court: Yes, sir.

Q. What importance, if any, has transportation got in connection with the sale of the lots of the North Columbia Land Company?

A. I regard it as vital.

[fol. 441] Q. About how many homes or lots have been sold out there during the last fifteen or twenty years?

A. I couldn't give you a very definite statement off hand, but I suppose something like, that have been some sold and built—probably one hundred and fifty. More than that have been sold, but that money have been built up.

Q. How big is the Town of Arden?

A. It has about six or seven hundred people.

Q. Have you sold most of those lots out there yourself?

A. Practically all of them.

Q. What, if anything did the people inquire about with reference to transportation?

A. The question has not been commonly raised, but it has been raised in some instances. The statement has been made like this "the company may dispose of lots and discontinue the street car service. My assurances were that the company had a contract with the railway company.

Q. What effect did it have if any with reference to the sale of lots?

A. Very little has been done, if there had not been a street railway service.

Q. What schedule did the street car company furnish?

A. Half an hour schedule.

Q. Did the people patronize that line out there well?

A. Quite generally until recent years. Very few people had their own transportation and relied almost entirely on the street cars.

Q. What effect has the discontinuance of the street cars had on your selling lots out there?

A. Something like paralysis would be in the individual, I judge.

Cross-examination.

[fol. 442] By Mr. McLain:

Q. You still have this valuable property out there?

A. We consider it valuable out there.

Q. Despite the fact that no street cars are running?

A. The street cars are not running at this time.

Q. You still consider it valuable property?

A. I think so, because we hope the street cars will be run again.

Q. When did you go to Florida to sell land in Florida?

A. I think the latter part of '24.

Q. The street cars were running then?

A. I believe they were.

Q. They stopped when you got back?

A. I don't know—they have been stopped for several months.

Q. Despite that, you came back to continue selling these North Columbia Lots?

A. Yes, sir.

Q. Didn't you get out a circular like that and handed it around about the values of these lots?

A. I think I did.

Q. You said in there that there is thirty million to be expended in this section of the City?

A. Yes, sir; that was my understanding.

Q. Gigantic power plant?

A. Yes, sir.

Q. Railroad construction at the Southern Shops?

A. Yes, sir.

Q. Railroad from Greenwood to Augusta?

A. Yes.

Q. New Hotel?

A. Yes, I wrote that.

Q. Where is the hotel?

A. That was a common rumor that a site had been secured. In fact, all the information I had was from the newspapers as to this development.

Q. You say this great development will greatly increase [fol. 443] A. Yes.

Q. Suburb with City conveniences?

A. Yes.

Q. You got this out after the street cars had stopped?

A. Yes, sir; I suppose so.

Q. How long did that line run—the street cars?

A. It was in operation when I came here in 1907.

Q. Been operated continuously ever since until March of last year?

A. How is that?

Q. Was operated continuously until March of last year?

A. I don't remember when it was discontinued. Up until the time it was discontinued it was operated continuously.

W. F. CLEVELAND recalled:

Q. Approximately how many people live out in the town of Eau Claire?

A. Twenty-five hundred or more.

Q. You don't know exactly?

A. No, sir; I don't know the exact number.

Q. Are you including in that estimate those who live in Colonial Heights?

A. That is in Eau Claire. That has increased some.

Cross-examination.

By Mr. Lyles:

Q. You mean the Twenty-five hundred is increased?

A. I think in the last ten years it has increased considerably. A lot of people has moved in Colonial Heights, in Eau Claire and a lot in the other side.

Q. What would you give as a liberal estimate today?

A. I believe taking into consideration both places, it would run around Thirty-five hundred peoples.

Q. You think thirty-five hundred is a liberal estimate?
A. I think it would be at least that much if a census were taken.
[fol. 444] Q. That doesn't include the people who live in the Town of Orden?
A. No, sir.

J. H. KEISLER recalled.

By Mr. Belser:

Q. Did you see the trucks bringing men out to work on the street car tracks during the last year or two of the running of the street cars out there?
A. Yes, sir.
Q. What company's name, if any, was on the trucks that brought them out there?
A. Broad River Power Company.

Cross-examination.

By Mr. Lyles:

Q. The Street Railway Company had a force to repair those tracks
A. They had what you call a section man.
Q. Who was at the head of that?
A. Mr. Hill.
Q. He is the gentleman who got killed by having a tree fall on him?
A. Yes, sir.
Q. They repaired them in the same way, with the same forces, as long as they run them?
A. I think so.

Redirect examination:

Q. Do you know who Mr. Hill was working for when the tree fell on him?
A. I think he was working for the Saluda Power Company when he got killed. The Saluda Dam people. He wasn't with the Broad River Power Company when he got killed.

Mr. Belser: We would like to ask you to produce the letters and circulars put out by the Broad River Power Company with reference to the sale of its bonds. The one which is referred to in number twelve of our notice to produce, offering for sale one million twenty-five thousand dollars of Broad River Power Company cumulative preferred stock.

Mr. Le Pine: We object to the introduction in evidence of the circulars, on the ground of their being irrelevant to this case.

[fol. 445] Mr. Belser: We want to call for a duplicate copy of the letter referred to in this circular.

Mr. Le Pine: You will find that printed on the inside.

Mr. Belser: Do you concede that Mr. Barstow wrote this, that this is a copy of Mr. Barstow's letter.

Mr. Le Pine: That is a copy of his letter.

Circular and letter introduced in evidence and marked Exhibit No. 27.

Mr. Lyles: The objection of irrelevancy goes to this.

The Court: I will consider all of your objections.

JOHN W. JENNINGS sworn.

Direct examination:

Q. You are a resident here in the City of Columbia, Mr. Jennings?

A. Yes, sir.

Q. Several years ago you were a member of the Legislature?

A. Yes, sir.

Q. Mention has been made a few minutes ago of a Mr. Hill who you heard carried men out on the street car truck and as being killed?

A. Yes, sir.

Mr. Lyles: I object to that.

The Court: I don't see where that is relevant.

Witness: Mr. Hill had charge of the work car at the time Columbia Street Railway Gas & Electric Company

had the car lines, and when the car line was discontinued, Mr. Hill was in charge of some work forces, clearing a right of way for the Broad River Power Company. At the time he was killed he was on Mr. Huffman's land across the river, about three quarters of a mile from my home. Broad River Power Company was putting high tension lines through, and Mr. Hill was working for Broad River Power Company. They had just crossed the premises of my grand-mother and were on the premises at the time [fol. 446] Mr. Hill was killed of my uncle. They owned the right of way in their name. They built the lines through there and they ke-p up the lines.

Q. They came through lands of your aunt?

A. Through my grand-mother's land and my Aunt's too.

Cross-examination.

By Mr. McLain:

Q. When was Mr. Hill killed?

A. I don't recall the exact date, but I recall the accident when the tree fell on him at the time he was in charge of these workmen.

Q. That was after the street cars stopped?

A. Yes. Up until the time the street cars were discontinued he had charge of the work car on the car line. When the street cars were discontinued, put out of operation, he was in charge of a work force on the construction of these lines—high tension lines.

Colloquy Between Referee and Counsel

Mr. Belser: I want to call attention to this portion of this exhibit No. 27, consisting of the circular about the sale of one million two hundred fifty thousand dollars of Broad River Power Company, seven per cent. cumulative stock. Under the head of properties and power sites, on the first page, under the sub-title——Mr. W. S. Barstow, President of Broad River Power Company has summarized his letter to us as follows: Under the head of "Properties and power sites." The electric properties which Broad River Power

Company will control and operate will include, in addition to the new steam power plant, two hydro-electric power plants and the steam power plant," with some ommissions. In that same sub-paragraph it says: "The electric railway property consists of thirty miles of standard gauge trackage and sufficient equipment for operation." Also, on the second sheet of this circular, under the letter itself, which is set out in full on pages two, three and four, the letter [fol. 446½] being addressed to Messrs. Pension and Company and West & Company, and signed "Yours very truly, W. S. Barstow, President," and headed "Broad River Power Company, Office of the President," we find the following under the heading "properties and power sites":

"The electric railway property consists of thirty miles of standard gauge trackage and sufficient equipment for operation." I also want to call attention to the paragraph under the head of "Valuations," on page two. "The physical properties of the Columbia Railway Gas & Electric Company, Columbia Gas Company and Parr Shoals Power Company were valued by independent engineers at a total of twelve millions two hundred twenty-seven thousand dollars, of which about two and one-quarter millions is represented by electric railway department. This total is exclusive of any franchise or other similar property."

I also want to call attention, under the head of "Organization and business."

Mr. Lyles: We want to call your attention to the whole statement. I don't want your Honor to get the impression of what the document consists of from excerpts.

Mr. Belser: Under the head of organization and business: "Broad River Power Company was organized in July, 1924, in South Carolina, for the purpose of acquiring the entire outstanding common and preferred stock of the Columbia Railway, Gas & Electric Company, which electric company owns or controls all of the outstanding common stock. In pursuance of this plan, the company will own and take over substantially all such preferred and common stock of Columbia Railway, Gas and Electric Company and preferred stock of the Parr Shoals Power Company. It is intended that the company will effect a transfer to itself of all physical property, franchises and other assets of the [fol. 447] Columbia Railway, Gas & Electric Company and

Parr Shoals Power Company, except street railways may be held in a separate ownership.

Under the head of "Franchises"

Mr. Lyles: If this is going to be taken down and written out, I ask that the whole statement be read.

The Court: If counsel desire it, I will have the entire paper incorporated in the record.

Mr. Edmunds: The paper is in evidence, I submit that the paper being in evidence, we can call attention to such portions of it as we see fit. Counsel on the other side can call attention to such portions of it as they see fit, and in each instance it may be incorporated in the record of the proceeding.

The Court: I don't rule that you can't do it. If you follow that method, the other side will get up and do the same thing. I am going to assure counsel on both sides that I am going to read them carefully.

Br. Belser: Under the head of franchises, "operations in the Columbia District are carried on without competitive rights to operate, which are without limit of time, granted by the City of Columbia, as well as the State of South Carolina. The franchises are without burdensome restrictions." This letter is dated November 10th, 1924.

Mr. Belser: We want to ask for the letter referred to in paragraph thirteen, dated January 3rd, 1925, offering for sale one million five hundred thousand dollars of Broad River Power Company six and a half per cent. gold bonds.

Mr. LePine: We produce that and make the same objections.

The Court: Received subject to the same objections.

Above letter introduced in evidence and marked Exhibit "28."

Mr. Lyles: To relieve counsel, my associates inform me [fol. 448] that they can secure copies of the circulars, and we will be glad to furnish them to counsel, and in that way, I think it would relieve the necessity of reading them now.

Mr. Belser: We want the letter from Mr. Barstow to Pension and Company, dated September 20th, 1926, in connection with the sale of one million Broad River Power Company, five per cent. gold bonds.

Mr. LePine: I might say as to that, we make the same objection as to its admissibility. The particular copy I have here is printed in connection with a circular printed by a financial house in no way connected with the Broad River Power Company. I want to destroy the first page. The letter he wants is inside of this circular. The Broad River Power Company is in no way responsible for it.

The Court: I agree with Mr. LePine.

Mr. Edmunds: We are not offering at this time the first page. But, if in the future, it might be established that Halsey-Stewart Company were out representing the Broad River Power Company, we reserve the right to offer the first sheet. I call Your Honor's attention to this, the letter itself is addressed to Halsey Stewart Company, in which he is submitting to them certain information. Just as in the other case Halsey Stewart Company is offering some statement to the public based on that letter.

Mr. LePine: I might say that the Halsey Stewart Company is a company that buys bonds and sells them, giving the public information about them.

Letter of W. S. Barstow to Halsey, Stewart Company, dated September 14th, 1926, introduced in evidence and marked Exhibit No. 29.

Mr. LePine: I am merely introducing these for inspection, because these are in the same category as the other. [fol. 449] The front page is a statement of the bond salesman.

Mr. Lyles: We make the same objections to the introduction of those two letters.

Letter from W. S. Barstow to Halsey, Stewart Company, dated January 28th, 1926, marked Exhibit No. 30.

Letter, dated April 20th, 1926, from W. S. Barstow to Halsey, Stewart Company, introduced in evidence and marked Exhibit No. 31.

Mr. Lyles: In connection with the fact that Counsel has been particular to call attention to the statements of net earnings, in order that there may be no misapprehension—we do not fear the misapprehension on the part of the Referee, but possibly there is present one who might communicate the statements made, we would like to read the statement of gross earnings.

(Reads statement of earnings.)

Mr. Belser: We want to introduce in evidence copy of this record in the Leitner case. We do not care to introduce it all. We want to introduce in evidence the complaint, and the answer, and the proceedings and testimony beginning at page nine down through page 12—under the head of Testimony for plaintiff.

Mr. McLain: Does that show the notice to produce that was served in that case. We object to it, unless it shows the whole setting that was made in the Court of Common Pleas.

The Court: That will be taken subject to objection.

Mr. Lyles: We have various objections to that, and I understand we won't state the objections at this time.

The Court: You need not state them at this time. I happen to know the plaintiff, and that is all I know about it.

Printed record of the Leitner case introduced in evidence and marked Exhibit No. 32.

[fol. 450] Resolution dated June 7th, 1927, introduced in evidence and marked Exhibit No. 33.

Ordinance dated August 23rd, 1921, introduced in evidence and marked Exhibit No. 34.

Ordinance dated January 24th, 1928, introduced in evidence and marked Exhibit No. 35.

Mr. Belser: If you do not propose to produce Mr. Barstow, we would like to know that.

Mr. Lyles: Mr. Barstow knows absolutely nothing about the details of this transaction, and my information is that counsel did send a subpœna to him at New York, and that subpœna reached him and called for his attendance at the first reference set. My information is that since that time and prior to the receipt of counsel's letter, Mr. Barstow had left New York and gone somewhere in Southern waters, and the request of counsel had not reached him to be present here, and, in fairness to Mr. Barstow, he really knows nothing about the details of any of these transactions, those are handled by the general executive. We have the Vice President of the organization here, and the head auditor, and the gentlemen who are really familiar with all of the transactions.

Mr. Belser: I say in reply to that that we did serve a subpœna through the m-ile, which we of course realize is not binding service on a man living in another state. We also served this notice on counsel for the other side, and with referece to this hearing, we wrote Mr. Barstow again about a week ago and requested him to be present at this time, that we wanted to examine him and we also notified counsel on the other side again that we would like to have him at this hearing. We do not consider at all that it is legally proper for them to excuse Mr. Barstow or under-
[fols. 451-453] take to do so in view of the fact that he himself has apparently signed the letters which they have produced in response to our request, and he signed these letters which contain a great deal of extremely pertinent information which we would like to examine him more in detail about, and we don't think any other officer of the company is anything like in a proper position to give us the same testimony which we want. That is a matter which we cannot avoid at this time. We do think that, in courtesy to the Court and in respect to the laws of the State and the State of South Carolina, under whose jurisdiction and authority the corporation acts, Mr. Barstow should make an effort to come and testify in this case.

Mr. Lyles: My information is Mr. Barstow left New York on the 10th, and my advice is that the letter of counsel did not reach him, and his present whereabouts are unknown. So far as any disrespect to the Court or State, while I do not happen to know Mr. Barstow personally, I am confident he is in ignorance of counsel's request. We have unhesitatingly given him Mr. Barstow's letters. Furthermore, counsel further knows, if he really desired and felt it important to his case to examine Mr. Barstow, instead of putting up this sort of stuff, he had a legal right whereby he could have examined him.

Reference adjourned until Monday, March 5th, 1928.

[fol. 454] IN SUPREME COURT OF SOUTH CAROLINA

EX PARTE: STATE OF SOUTH CAROLINA ex Relatione JOHN M. DANIEL, Attorney General, et al., Petitioners,

against

BROAD RIVER POWER COMPANY, COLUMBIA RAILWAY GAS & ELECTRIC COMPANY, and F. D. Campbell, Respondents; Ex parte Town of Arden, The City of Columbia, et al., Intervening Respondents

Evidence

Reference was resumed pursuant to adjournment at 3:30 P. M., this 5th day of March, 1928, in the Supreme Court Room, in the City of Columbia, South Carolina.

Present: Hon. John M. Daniel, Attorney General; Ervine F. Belser, Esq., and H. N. Edmunds, Esq., attorneys for the petitioners; J. B. S. Lyles, Esq., W. C. McLain, Esq., and Geo. Le Pine, Esq., attorneys for respondents.

Mr. Belser offers in evidence, or asks to have considered in evidence a copy of the bankruptcy schedules which were filed by the Columbia Railway Gas & Electric Company; and also certain stock books of that company.

Mr. Lyles: I ask if the Referee feels it necessary, in view of the fact that this is another hearing and with a different stenographer, to repeat the grounds of objection to all this evidence relating to the Columbia Railway Gas & Electric Company, or the different parties, which have heretofore been entered at some length.

[fol. 455] The Referee: It is not necessary to repeat your objections and it is understood that your objections will be continued throughout the case. This objection applies both to the schedules and the stock books offered.

Bankruptcy schedules of the Columbia Railway Gas and Electric Company received in evidence subject to objection, and marked "Exhibit 1, M. McF."

Stock book of Columbia Railway Gas & Electric Company No. G-751, received in evidence subject to objection, and marked "Exhibit 2, M. McF."

Stock book No. A-1, of the Columbia Railway Gas & Electric Company received in evidence subject to objection, and marked "Exhibit 3, M. McF."

Mr. Belser: We are preparing to put Mr. Tatum, a member of the Railroad Commission, on the stand from whom we expect to prove certain of the admissions made by the officers and representatives of the Broad River Power Company before the Railroad Commission, which he heard. Of course, in proving them in the nature of admissions, we in doing so, don't, as your Honor understands, waive our position that this record is admissible upon the bases that it is a record of the Railroad Commission, and not in any sense as waiving our view that the findings of the Railroad Commission are binding on this Court, but in so far as there are additional issues in this case, we want to prove these admittions in this case in view of your Honor's tentative ruling on that question.

The Referee: Of course, you understand that this record will be before the Supreme Court, even though they may not agree with you, or I may not agree with you.

Mr. Belser: I believe your Honor will change your mind. For the present I want to get before your Honor evidence which Your Honor will consider and we want to take this course, but we want to say in doing so that Mr. [fol. 456] Tatum has come over here today at very considerable personal inconvenience and he says that he has got to go back home in the morning.

Mr. Tatum: Mr. Referee, our Court in Bishopville is convening this week. It is criminal Court and the attorneys and the Judge excused me today, but I promised that I would be back in the morning.

Mr. T. H. Tatum was duly sworn and testified as follows:

Direct examination.

Questions by Mr. Belser:

Q. You are now, and have been for several years, or sometime at least, a member of the Railroad Commission?

A. Yes, sir.

Q. You are also a practicing lawyer at your home in the City of Bishopville?

A. Yes, sir.

Q. Mr. Tatum, I believe that you attended the hearings down at the Railroad Commission in which the Columbia Railway Gas & Electric Company asked permission to discontinue service and to which proceedings the Broad River Power Company was made a party?

A. I think I attended all of the hearings based upon the petition of the Railway Company to permit them to discontinue service. There was one hearing during my absence, but I think that was upon another process.

Q. Now, Mr. Tatum, I believe you had a considerable share in the preparation of the order of the Railroad commission which finally resulted as a result of that hearing in a majority opinion?

A. Yes, I drafted the order after consultation with my [fol. 457] associates who signed it with me.

Mr. Lyles: These orders, it is my understanding have already been offered in evidence and received over the objection of the respondents and I think it is, therefore, proper, just for the Referee's information, to call attention to what I understand to be the fact, that all of these orders were directed only to the bankrupt and related specifically to the street car service over the lines of the bankrupt, and we ask your Honor to rule that the same objection on those grounds continue to the testimony of this witness and we particularly call your Honor's attention to such consideration as you see fit to give to that situation as to those orders.

The Referee: I fully understand your objections, Mr. Lyles, and of course, they will continue.

Q. After asking you just generally, we will go into the record in detail, or at least into your recollection of the record if you can refresh your memory by it. I ask you first of all with reference to the finding of the Commission, that is the majority of the Commission, as stated in the following words, substantially as to whether it was based in part, or in whole, upon the admissions of the officers of the Company and statements filed by them. This is the holding that I am referring to:

"In addition to the foregoing reasons, the service discontinued should be restored even if the Commission had the

power to authorize its permanent discontinuance because from the showing made we can not escape the impression that the management of the Street Railway was not pursued that aggressive policy calculated to meet the conditions of modern competition and necessary to enable it to stay in the field. Instead, the policy seemed to encourage and even invite competition and then to pliantly yield to the encroachment of its competitors, all the while driving away patronage by the character of the service it was rendering. [fol. 458] It would be wholly illogical to say that its eyes were shut to the inevitable results that would follow such a course. It was bound to know that it was contributing to its own destruction, and knowing it and failing to take the necessary corrective measures the conclusion is inevitable that it intended the results that have been brought about. Therefore, the fact of losses in operation is not conclusive that it is entitled to the relief asked. We are of the opinion that by proper management it could be made to yield fair returns, but certainly the suicidal policy it adopted estops it from asking relief upon the ground of unproductive operations.

"Again we think that in spite of what appears to have been a deliberate attempt to break down its street car operations it is making money upon all of its operations treated as a unit."

Now, I will ask you whether or not that finding of fact was based in part or in whole upon admissions made by the officers of the Broad River Power Company that you heard?

Mr. Lyles: In addition to the objection already made to the testimony of this witness, we submit that it is utterly incompetent to have testimony of this character. The order explains itself, so certainly no administrative party has a right to offer parol testimony in support of an order. The proposition is so foreign to my conception of the judicial proceedings that I hardly know how to frame my objection, except to say that it — beyond all the rules covering such matters.

The Referee: It appears to me to be incompetent, but under the rule it has to be taken.

Mr. Belser: We are not offering this as a basis for this order of the Railroad Commission particularly. We state

that we are offering it primarily to meet whatever other issues there are as admissions made by this company and its officers.

The Referee: To save time, go ahead. At the present [fol. 459] time, it appears to me to be incompetent, but under the rule, I have to go ahead and take it.

Mr. Belser: We are trying to put in evidence that your Honor will accept. We think it is already competent on this theory that these are admissions, in so far as they are admissions made by officers of the company, that this witness has heard.

The Referee: I think you can prove the admissions, of course. I am not convinced that you can have an administrative officer give his reasons for passing an order.

Mr. Belser: I am not offering it for that purpose.

A. The findings referred to were based in part upon the admissions made by the officers of the Railway Company.

Q. I will read you further in this order: "We do not think that the 'separation' of its various public utilities into distinct and separate corporations accomplished the result contended for, that is, of completely divorcing the activities and liabilities of the one from those of the other. It appears to us that the Broad River Power Company, the owner of a majority of the stock of the Street Railway, and with interlocking directors undertook to strip the Railway Company of its assets and left it with its liabilities. If that be true it is a violation of their trust, bad faith with the obligees of the Street Railway, and the law would set aside the transaction. There can not be a separation in law that is not a separation in fact, and this case bears little if any, evidence of a separation in fact. They reside under the same roof, feed at the same board, from the same larder, and under the same head of the household; they have too much unity to have much diversity." Then there is a quotation from the case of Bradham vs. Southern Express Company. "We think these concerns are still one; and treated as one, and [fol. 460] their operations as a whole are not unprofitable." Was that also based upon the admissions of the officers of the Broad River Power Company?

Mr. Lyles: We object to that.

(Taken subject to objection.)

A. It was.

Q. What did you mean by that?

A. The finds referred to in the last question were based in part upon admissions of the officers.

Q. Now, Mr. Tatum, did you hear Mr. Costello make any remarks or make any statements at this hearing before the Railroad Commission?

A. Yes, Mr. Costello testified and I heard all of his evidence.

Q. Who was Mr. Costello; what did he say his official connection was?

A. He was the auditor of the Columbia Railway, Gas & Electric Company.

Q. How about the Broad River Power Company?

A. As well as the Broad River Power Company, I so understood.

Q. Now, Mr. Tatum, turning for example to page 25, to refresh your memory, will you tell us there how much expenses were charged—just refresh your memory and tell us what, if anything, Mr. Costello said about the charges to the Street Car Company for the upkeep of the poles used in connection with the Street Railway business?

A. They said that they had spent $2,133.44 for poles and fixtures; that is, maintenance of poles and fixtures during that period.

Q. Charged to whom?

A. Charged to the Street Railway Company.

Q. Now, turning to page 33 and refreshing your memory there, can you tell us what Mr. Costello said about the [fol. 461] charges to the Street Car Company for power during the two months of 1927, as to how much those charges amounted to?

A. He said that during the two months of 1927——

Q. They took in how much?

A. They took in $5,855.54.

Q. That is from the operation?

A. That is from the total operating revenues, as I understood; and paid to the Broad River Power Company $4,561.40 for power during that period.

Q. That much money was, he said, charged to the Street Car Company by the Broad River Power Company for power?

A. Yes, he said it was paid to the Broad River Power Company.

Q. Turning to page 38, Mr. Tatum, what statement did Mr. Costello make about the combined expense income for that period of the Broad River Power Company, of the street car department, what did he say about that?

A. I would like to run over what the statement of Mr. Costello?

Q. If that accords with your recollection?

A. That accords with my recollection.

Q. All right?

A. Referring to an analysis of a statement which he had filed with the Railroad Commission, he stated that it left out the item of depreciation and he went on to say that the balance of net income before the depreciation for the Broad Rover Power Company was $302,039.72; for the Columbia Railway, Gas & Electric Company, a deficit in the amount of $49,307.51; the combined statement of the two companies would reflect a balance of net income before the depreciation of $352,732.21.

Q. For what year was that?

[fol. 462] The Referee: Don't you think he ought to read the rest of it?

Mr. Belser: I don't care about the rest of it, he can bring that out.

Mr. Lyles: We object to this manner of examining him, asking him about an admission. It seems to me that the rules of evidence would require the complete alleged admission.

The Referee: I suggest that the witness reads the full answer, particularly where he is now.

Mr. Belser: In order to do that, it would be practically necessary for us to read the whole thing. We are taking up certain things that we think are admissions and offering it on that theory. Of course, we offer the whole thing and they have objected to it. It seems to us that we should be allowed to offer the evidence in the way that we think proper.

The Referee: I *am* simply stated to the witness as to that particular question.

A. I am not certain about the year that that referred to, but I think it was 1926, but it might have been a previous year.

Q. Referring to page 40, I will ask you what admissions, if any, Mr. Costello made as to the ownership of the stock in the street car company by the Broad River Power Company?

A. He said that all of the common stock of the street car company was owned by the Broad River Power Company and a part of the preferred stock.

Q. All except how much?

A. All of it was owned by the Broad River Power Company except 109 shares.

Q. Do you recall what he said about the total number of shares there were?

A. I haven't it before me, but my recollection is that he said that it was 433 shares, that might not be it exactly, but [fol. 463] I have this in mind that it was something like one-fourth of it—something like three-fourths of it owned, I have that recollection, by the Broad River Power Company.

Q. I don't think that there is any dispute about the fact that there were 20,000 shares of common stock?

A. Yes, and a great deal of that was retired. It may be that the 433 shares that I have in mind might have been the balance of the common stock that remained unretired at that time. I am uncertain about those exact figures.

Q. Referring to page 41 for the purpose of refreshing your memory, and about the middle of the page, I will ask you how much money the Broad River Power Company admitted or claimed they had lent to the street car company?

A. He said that the Broad River Power Company on February 28, 1927, advanced to the Street Railway Company to meet its deficit, $112,500.00.

Q. How much security was there for the $112,500.00?

A. No security.

Q. What arrangement did he say or claim had been made by the street car company to replace this advance?

A. He stated that there was no maturity date, no due date.

Q. What, if anything, did he say as to whether or not the reason was that the Broad River Power Company owned

all the stock of the Columbia Railway, Gas & Electric Company?

A. Yes.

Q. What admission did he make in answer to the question, "Is that the way you do business?"

A. He stated that the Broad River Power Company owned the stock of the Columbia Railway, Gas & Electric Company and that the only thing that they had was these advances as between themselves. Meaning, I take it, that [fol. 464] they had the record of the advance, transaction between themselves.

Q. Now, Mr. Tatum, referring to page 53 and refreshing your recollection, what is your recollection of what Mr. Costello said or admitted as to the request of the Broad River Power Company to the White Motor Company to extend credit to the Carolina Transit Company—but before I come to that, I will ask you what did he say was the business of the Carolina Transit Company or the Bus Company?

A. It was a transportation company operating in the city of Columbia.

Q. What kind of transportation?

A. A bus company. I don't think I answered your last question.

Q. Turn to the bottom of that page 53 and refresh your memory?

A. Mr. Costello stated in response to a question that had been asked at another meeting if the street railway company didn't ask the White Motor Company to extend credit to the bus company, meaning the Carolina Transit Company, and the witness replied "I believe so."

Q. Who did he say made that statement?

A. He said Mr. Peterman.

Q. Who was Mr. Peterman, did he testify down there?

A. Yes, I heard him.

Q. What office did he hold with the Broad River Power Co.?

A. At that time he was an executive officer, Vice-President, or General Manager. He was the executive head of the company at that time.

Q. Now, Mr. Tatum, turning to page 58 to refresh your memory about what the witness said, referring particularly

to the first two or three answers there, what did Mr. Costello say was his understanding of the transfer that was [fol. 465] made from the assets of the electric and gas departments to the Broad River Power Company, or however the matter was handled?

Mr. Lyles: We enter an additional objection to that. He is speaking of a matter of record, and the transfer itself would be the best evidence before this Court.

Mr. Belser: We take the position that that kind of a transfer from one branch of the company to another can be in numerous ways.

Referee: Taken subject to objection.

A. Testifying at that time about the separation of the electric and gas business into one corporation and leaving the electric street railway business in another, he stated that the transfer of certain assets of the parent corporation to the Broad River Power Company, and it was his understanding that the assets of the electric and gas department were transferred on the assumption of the liabilities of those to and what was left was those appertaining to the street railway.

Q. Now, refreshing your memory down near the bottom of that page, what was the testimony or what was the statement or admission made by Costello as to how many shares of the common stock were owned by the Broad River Power Company and how many had been retired and how many were outstanding?

A. He stated that 217 shares of the common stock were outstanding at that time, all owned by the Broad River Power Company.

Q. What did he say had been done with the other 19,783 shares?

A. He said they had been retired. He said that 433 shares of the preferred stock, of which 324 were owned by the Broad River Power Company and 109 were in the hands of individual stockholders.

Q. Turning to page 60 and refreshing your memory, by [fol. 466] the first answer there, tell us how much money was charged to the street railway department for power from January 1st, 1922—that is, what he said was charged to the street railway department for power from January 1st, 1922, to February 28, 1927?

A. $247,698.70 for that period.

Q. Now, refreshing your memory by the answer there, 2/3 of the way down the page, how much less than that amount did Mr. Costello say that that power would have cost the street railway company if it had been charged to the street car company under Schedule #1?

A. That would have been more, according to his statement. The cost to a cotton mill under schedule #1, would have been $263,066.84. That is what he said it is.

Q. Turn to page 63 and refresh your memory of what you heard there and tell us from his testimony, or do you recall whether he said they were charging the street car company, or the street car department, more or less than the rate to a cotton mill?

A. In answer to the question of the Assistant Attorney General, his statement is that they were billing out to the street car company at one cent per kilowat an hour. It seems to be a little bit confused.

Q. If you don't recall and cannot understand it, we will leave it. I couldn't understand it?

A. No, sir, I don't.

Q. Do you recall one way or the other what he said as to whether or not the power department was charging the street car department more or less than they were charging to the general public for power?

A. No, I don't recall.

Q. Now, Mr. Tatum, did you hear Mr. King make any statements with reference to the matters in question, turn-

[fol. 467] ing to *to* page 66?

A. I heard all of Mr. King's evidence.

Q. Turning to page 66, what did he say was his position with the company?

A. He said he was general auditor for all of the so-called Barstow companies.

Q. All of the so-called Barstow companies?

A. Yes, the General Gas & Electric companies.

Q. Turning to page 68 to refresh your memory there, what did Mr. King say there, or what was his admission as to the way that this transfer from the Columbia Gas & Electric Company was made to the Broad River Power Company and by what proportion of the stockholders, preferred and common, was it approved?

A. He said that the preferred stock of the Columbia Railway Gas & Electric Company had in effect been assumed by the Broad River Power Company, and that the proposition to sell the electric and gas departments of the Broad River Power Company were approved by the majority, or 75% of the stockholders, both preferred and common—the common was all Broad River stock. He stated that there was no way to get in the small stockholders of the preferred stock.

Q. What did he say the Broad River Power Company had done with reference to taking care of the preferred stock, the 109 shares of preferred stockholders?

A. He said that in order to prevent criticism, there was deposited with the Chase National Bank in New York City one hundred dollars per share of the preferred stock then still outstanding and he said that money was still there.

Q. What did he say about whether or not the bonds of the Columbia Railway Gas & Electric Company and all of its bonded indebtedness had been assumed by the Broad River Power Co.?

A. He said that the bonds of the Columbia Railway Gas [fol. 468] & Electric Company were assumed as to principal and interest by the Broad River Power Company.

Q. Now, turning to the bottom of page 68 and the top of page 69, refreshing your memory, what admission did he make in answer to the question made by you as to the outstanding stock of the Street Railway Company as to whether or not it was the same as it stood before the transfer of the assets to the Broad River Power Company?

A. He said it was the same.

Q. What about its then condition, that is, whether they were outstanding like they had been before, refreshing your memory from page 69?

A. He was asked if the present stock of the Street Railway Company was the same as it stood before the transfer of the assets to the Broad River Power Company and his answer to that is that it was not the same. He said that the present stock had been reduced by surrender to the Broad River Power Company of 19,783 shares of the common stock out of 20,000 shares and that there was actually only 217 shares of common stock outstanding at that time of the Railway Company.

Q. 217 shares; and of the preferred stock, what did he say about them?

A. He said that 8,520 shares of the preferred stock of the Railway Company was owned by the Broad River Power Company and was surrendered to the Railway Company for cancellation, leaving outstanding 433 shares, of which one hundred and something, more exactly stated, 109 shares I believe, were out in the hands of the public, held by other stockholders.

Q. Now, Mr. Tatum, turning to page 70 and refreshing your memory there about what he said about the current assets and the current liabilities after the transfer from one [fol. 469] company to the other, what was the condition of the Street Car Company. First of all, roughly refresh your memory and run over the total assets. What did he say about the materials and supplies as of July 31, 1925?

A. Materials and supplies of that date was $13,521.94; Insurance premiums paid in advance (that is, the unused portion of the premiums on insurance), $135.54; Cash in hands of cashier for making change, etc., $400.00; Other cash, $51,469.78; Accounts Receivable, $9,618.66.

Q. Can you total them roughly in your mind—state whether or not that amounts to about $75,000.00 or less?

A. Something over $75,000.00.

Q. Those were approximately the assets that he said the company had after transfer?

A. Yes, sir.

Q. What were the current liabilities that he said the company had?

A. The liabilities were Notes payable, $7,685.28; Accounts payable, $56,547.77; Loans payable, $20,000.00; Paving assessments $33,244.97; Conductor's badge and key deposits, $60.00; Ticket liability, $20.14; Taxes, $11,655.32.

Q. Run those up and tell us roughly how much that is?

A. Something over $120,000.00. $121,000.00 and some odd dollars.

Q. According to that statement what did he state, or what as to the current assets and liabilities of the company, as to whether or not it was left solvent or insolvent, according to that statement, the liabilities exceeded the assets by how much?

A. $45,000.00 to $50,000.00.

Mr. Belser: The outstanding operating obligations, Your Honor, as well as the physical valuation of the property was not included in that. That is current assets and liabilities.

[fol. 470] (Mr. McLain states that the statement has a $30,000 typographical error in it.)

Q. Now, turning to page 72 to refresh your memory, and also to page 71, what did he say was the financial condition of the company when it quit as of February 28, 1927?

A. After the surrender had been made of the property?

Q. Yes, February 28, 1927, about the time they tried to quit. Give us first the materials and supplies on hand?

A. $8,771.51; Insurance premiums $800.00; Working funds in hands of employees, $100.00; Cash, $318.04; Accounts receivable, $1,098.02.

Q. About how much does that amount to roughly?

A. About $11,000.00.

Q. Now, what were their liabilities that they claimed to have, or that he said they had at that time?

A. Accounts payable, $5,746.39; Loans payable, $112,500.00; Paving assessments $2,116.60; Conductors badge and key deposit, $39.00; Ticket liability, $261.57; Taxes, $1,647.26; Accrued insurance, $358.94.

Q. How much roughly do those liabilities amount to?

A. $127,000.00 or $128,000.00.

Mr. Belser: I find that I have made a few pencil memoranda on this, which is the original exhibit. I want to erase it.

The Referee: Just run a pencil through it.

Q. Isn't that amount approximately just a few hundred dollars over $120,000.00?

A. No, I don't make it that.

Q. The $112,500.00, referring back to page 41, or your recollection there as to what Mr. Costello said about the loan from the Broad River Power Company to the Columbia Railway Gas & Electric Company, can you tell us who that $112,500.00 was supposed to be due to?

[fol. 471] A. I take it, to the Broad River Power Company for a loan of cash advanced.

Q. Now, outside of that $112,500.00 what are shown to be the liabilities of the Columbia Railway Gas & Electric Company, outside of that $112,500?

A. About $10,000.00.

Q. Now, how does that compare with the total of the assets other than that $112,500.00 shown above which you say is about $11,000.00?

A. I think it is about $11,000.00 that I figured it.

Q. Turing to pages 93 and 94, did you hear Mr. Peterman make any statements that day?

A. Yes, sir.

Q. What position did Mr. Peterman occupy—I believe you said he was a Vice-President, an executive officer?

A. He was an executive officer.

The Referee: Was he a resident of Columbia at that time?

Mr. Belser: Yes, he was Vice-President.

Q. What did Mr. Peterman say as to whether or not the poles which carried the trolley wires—the cost of maintenance for the poles that carried the trolley wires was charged up to the Street Car Company?

A. He said that all the poles owned by the Street Car Company and the maintenance of the poles was jointly charged between the Street Railway Company and the Broad River Power Company.

Q. What did he say about how long the Broad River Power Company owned those poles?

A. Since the operation of the property.

Q. What did he say about what they paid the Street Railway Company for the poles?

A. He said that no payment was made, as far as he knew. [fol. 472] It — simply a transfer of the property, a book transfer of the property.

Q. What did he say about the joint use of the street car department and the power company?

A. He said they were jointly used, largely jointly used by the Broad River Power Company and the Railway Company. He said they tried to use them jointly wherever it was possible.

Q. Turning to the next page 94, and refreshing your memory, what did he say in answer to the question, "One company erected them, charged with them and you go ahead

and transfer them to the Broad River Power Company, what did the Broad River Power Company pay the Street car company for this equipment?" What was his answer to that?

A. He said it was not a matter of paying for the equipment, it was purely a transfer of physical property.

Q. What did he say about the price that they should be transferred at from one company to the other?

A. He said the property value was determined by an engineering firm.

Q. Who did he say employed that engineering firm?

A. He said—I don't know whether he was talking about the Broad River Power Company or the Electric Company at that time. I took it that he meant the Broad River Power Company.

Q. What did he say about whether someone employed by him, or his company fixed the value of this property, how it should be entered—did he say that was true or not, whether it was transferred at their own value?

A. He said that it was. He said that when they went to make transfers, it was transferred at their own value; that is, by persons employed by them, they fixed the value at which it should be transferred.

Q. Now, what did he say at the bottom of page 94, about who paid the bills for the erection of this equipment, that is, [fol. 473] for the poles and other equipment of that sort?

A. He said the Electric Company and the Street Car Company paid the bills for the original erection of the equipment.

Q. Now, turning to the middle part of page 95 and refreshing your memory from what you see there and from there on, what did he say as to whether or not the Broad River Power Company tried to use all those poles and for what purpose, as to whether or not it was to avoid duplication?

A. As to the expense of erection?

Q. As to the use of the poles?

A. He says that the poles were there to hold the trolley wires and in some cases they were used to serve the other companies. They tried to use these poles by the other companies wherever they could and wherever they could to avoid duplication.

Q. What did he say about if they took up the tracks, that they would still keep those poles to hold the electric wires?

A. He said that if they took up the tracks, they would still maintain the metal posts to hold the electric wires.

Q. What did he say as to whether or not that was a valuable asset that was transferred to the Broad River Power Company?

A. He said that it was equipment that could be used by the Broad River Power Company in a great many cases, and he believed it would be a valuable asset.

Q. Refreshing your memory down at the bottom of page 95 and the top of 96, what did he say about the way in which the bus company started to running the same route over to Olympia Mills that the street car company had previously run?

A. This was in response to a question of the Attorney General and he was asked if streets cars weren't running from the Union Station and Fair Grounds and to Olympia Mills and if the buses didn't establish a route there too and Mr. Peterman said he believed that was true. Then he was asked if they dropped their cars back to the Fair [fol. 474] grounds.

Q. That is, the street cars?

A. Yes, the street cars. He was asked if the street cars dropped back to the Fair Grounds and he said some such change was made and then he was asked if the bus company dropped its operation back to the Fair Ground and he said maybe so; then he was asked what occurred when they dropped the service back to Whaley Street, if the Bus Company dropped back to the Union Station, he said that may be so, that he couldn't say definitely, but in a general way it may be true.

Q. What did he say about dropping back to the Union Station?

A. He said when the street cars dropped back to the Union Station, then the bus company dropped back to the Union Station, rather he agreed that that might be true. He didn't dispute it.

Q. What did he say about whether it left all that section without any service except jitneys?

A. He said he believed that that was true.

Q. Now, Mr. Tatum, did Mr. Peterman say, turning to pages 96 and 97, what did he say about whether or not he was in charge of some property in Spartanburg?

A. He said that he was in charge of some other property in Spartanburg, the Spartanburg Gas & Electric Company that operated in the City of Spartanburg and vicinity.

Q. Do you recall what he said about what company held the stock in that Spartanburg Company, whether or not it was the same holding company that holds stock of the Broad River Power Company.

A. My recollection is that he did so state.

Q. Now, turning to page 100, near the upper part of that page, state what Mr. Peterman said as to whether or not he had told the transit company that the street car company was going out of business, that is, the Carolina Transit [fol. 475] Company, the bus company, in answer to the question, "Did you tell them you were going to go out of business?"

A. Referring to the Carolina Transit Company, his answer to that was "I believe so, yes."

Q. Referring to the bottom of that page, what did Mr. Peterman say about a representative of his company going to the White Motor Company and interested them in extending financial aid to the Bus Company?

A. He said that it was probably true. In answer to a question that if a representative of the street railway, or Broad River Power Company did not go to the White Motor Company to interest them in extending financial aid to the Bus Company, he said it was more or less hearsay on his part but it was probably true.

Q. Turning to page 104, what did Mr. Peterman say that his Spartanburg Company paid to Mr. Hawkins? What did he say Mr. Hawkins was doing?

A. Mr. Hawkins was manager of the Carolina Transit Company, commonly known as the Bus Company.

Q. What was the Bus Company doing?

A. It was operating buses in the City of Columbia.

Q. What did Mr. Peterman say about whether his Spartanburg Company was paying Mr. Hawkins $500.00 a month?

A. Mr. Peterman said that he was President of the Spartanburg Bus Company and that Mr. Hawkins operated the

Spartanburg Bus Company and he paid him $500.00 a month.

Q. And what other bus company did he operate?

A. The Carolina Transit Company in the City of Columbia which was then operating buses in the City of Columbia and was referred to frequently in this record as the Bus Company.

Q. Did Mr. Peterman say or admit where Mr. Hawkins spent his time, whether he lived in Columbia or not, or did [476] any of the other officers of the Bus Company admit that?

A. My understanding was that Mr. Hawkins resided in the City of Columbia. I got it from somewhere, from admissions made. I think that is true he did live in the City of Columbia.

Q. Turning back to page 99 and refreshing you memory by what you see there, what did Mr. Peterman say as to whether or not the Broad River Power Company would be willing to surrender its franchise; whether or not the Broad River Power Company and the Railway, Gas & Electric Company and the other companies would surrender their entire franchise rights in the City of Columbia?

A. He was asked if they would be willing, if his company would be willing to surrender its franchise, that is, the Broad River Power Company, the Columbia Railway, Gas & Electric Company and the other companies mentioned, if they would be willing to surrender their entire franchise rights in the City of Columbia, and he stated that he didn't think so, however, it was a matter for the Board of Directors to decide, but he didn't think they would.

Q. What did he say about whether they were making sufficient money to make that valuable?

A. He said that they had sufficient prospects to feel that it would eventually work out satisfactorily.

Q. Turn to page 117, and referring particularly to the upper part of that page, what did he say as to whether or not, he, Mr. Peterman, or the companies knew what each other were doing and whether everything that the Bus Company did was with the approval of the street car company?

A. He was asked if they had an agreement, that is, with the Bus Company and he said no agreement, but they were familiar with what each other were going to do. Every-

thing that he did, that is, the Bus Company, had his approval.

Q. Referring to the bottom of page 118 and the top of [fol. 477] page 119, what did he say as to whether or not the schedules of the two companies, that is, the Bus Company and the Street Car Company, were about the same?

A. He said that wherever the bus service was provided, they adopted the policy of discontinuing their cars.

Q. What did he say to the question if you were on the same route, they went a little ahead?

A. He said that didn't occur to his knowledge, but he imagined the schedules were about the same. In further answer to a similar question that if they did go ahead of his schedule, wouldn't it have the effect of taking away their traffic, he said that he would say so.

Q. What did he say as to whether that policy was agreeable to him?

A. He said that it was.

Q. Now, Mr. Tatum, turning to Mr. Spence's testimony, Mr. J. W. Spence, on page 119, who was Mr. Spence?

A. He had supervision of the operation of the cars.

Q. What did he say about whether they had an agreement to transfer between the Street Car Company and the Bus Company, page 120?

A. He said they had an agreement at one time.

Q. What did he say about whether or not the buses went ahead of the street cars, just a little ahead or a little behind?

A. He said sometimes ahead and sometimes behind.

Q. Do you recall one way or the other what Mr. Peterman said, if anything, as to whether the street car company made any objections to the Highway Department about their allowing the Bus Company to operate here in this community, or the Broad River Power Company?

A. I don't recall his making any such statement that they [fol. 478] had made any objection. I don't recall any reference being made to the Highway Department at all.

Cross-examination.

Questions by Mr. Lyles:

Q. Your testimony here as to your recollection is entirely based on refreshing the same by the testimony here?

A. Almost entirely, Mr. Lyles.

Q. How long have you been on the Railroad Commission?

A. Since March 9, 1927.

Q. And I believe these cars actually stopped running here on the 11th of March, 1927?

A. Yes, that is my recollection.

Q. Speaking of the transfers that Mr. Spence referred to as being in effect at one time between the street cars and the buses, you know that the transfers were ordered put in by the Railroad Commission, don't you?

A. My information is that that was ordered put in by the Railroad Commission. I was not on the Commission at that time.

Q. You took enough trouble to examine the orders of the Commission with reference to this subject matter here previous to this time and familiarized yourself with it?

A. Somewhat, yes.

Q. The street car servce of the Columbia Railway Gas & Electric Company was an issue in existence before the Commission, a long time before you came in there?

A. Yes, several years, two or three years.

Q. And you know as a matter of fact that the Commission had held a number of investigations and had entered a number of orders concerning it, which are in evidence here?

A. I think I can say yes to that.

Q. You know it as a practical matter. I think it was in June 1926, do you recall the date? However, subject to cor-
[fol. 479] rection by the order itself, in June, 1926, there was an order reducing the service or allowing discontinuance of all service except three lines?

A. I could not tell you the number of lines nor the date of the order, but I do know I found in the records orders permitting the discontinuance of service, or curtailment of service from time to time.

Q. You do know also that prior to the time you came on the Commission there had been an order authorizing the complete cessation of service after you came in, is that right?

A. No, that was the result of an investigation in which I participated.

Q. The Commission did vote one of these orders allowing a complete discontinuance of service?

A. Yes, it was a divided Commission upon that, but the majority of the Commission ordered a discontinuance authorizing the entire discontinuance.

Mr. Belser: That order is in evidence and admitted by us.

Q. The same division took place after the death of Mr. Sapp and the new man voted with your crowd and the same number got a majority and passed an order ordering the restoration of service, that is correct?

A. That is correct, yes.

Q. The Broad River Power Company filed all of the schedules of rates relinquishing its power with that Commission as required by law?

A. I presume so.

Q. Haven't you had occasion to examine those schedules?

A. Yes, I had occasion to examine them in response to a question of rates, but I have never examined the schedules in this connection.

Q. You know as a matter of fact that schedules were regularly filed?

[fol. 480] A. There is no doubt of it.

Q. And that the law calls on your Commission to approve or disapprove it?

A. I have seen the approval of the Commission of the rates of the Broad River Power Company.

Q. I want to get in the record. We have a Commission, supposed to be acting as a Public Utilities Commission for the Railroad Commission?

A. Yes.

Q. And that is your body?

A. Yes.

Q. And this body also had jurisdiction over the question of street car service of the Street Railway Company?

A. Yes.

Q. In your answers that you have given, when you spoke of the Railway Company, you meant the Columbia Railway Gas & Electric Company?

A. Yes.

Q. And it was invoking the jurisdiction of the Commission all during this time for what it claimed to be necessary relief in the street car service?

A. It did not at the time it stopped operating. It ceased operating without the authority of the Commission.

Q. But prior to that time?

A. Yes, prior to that time.

Q. Will you kindly turn to page 33. It is my understanding that you said that either Mr. Costello or Mr. Peterman, I forget which one, was testifying at that time answering the question you said that they took that $5,855.54 and paid for power $4,561.40. Won't you look at that and see if you didn't make a mistake in that statement so far as this record goes. You were testifying by this record, won't you read that question and indicate whether or not as a matter of fact, it was answered at all or not. Anyhow, read the [fol. 481] question down to the 6th line from the bottom?

A. He said that in 1927 they ran two months, that is, practically two months and took in $5,855.54.

Q. Just start there with the question "In 1927 you ran two months"?

A. "In 1927 you ran two months"? Answer, "Yes," Question. "Took in $5,855.54, and paid yourself for power $4,561.40." That was a question.

Q. Is there an answer to that question in this record?

A. No, sir, that is true.

Q. Will you turn to page 38—on page 33 you were mistaken as to the admission in that particular?

A. It would appear so.

Q. Turn to page 38 and you see the long answer there; you see the question "Leaving out depreciation, does it show a profit," you find that do you?

A. The combined statement of the two companies would reflect a balance of net income before depreciation of $352,-732.21.

Q. You recall that the witness was there being asked what would be the result of the consolidated statement of the two companies, the Columbia Railway, Gas & Electric Company and the Broad River Power Company, wasn't he?

A. Yes.

Q. And you said you thought that was for the year 1926, but you are not sure?

A. Yes, that is true.

Q. I ask you instead of reading a portion of the answer, I ask you to read the question and the complete answer?

A. (Reads:)

"Q. Leaving out depreciation, does it show a profit?

"A. The balance of the net income before depreciation for the Broad River Power Company, $302,039.72; [fol. 482] for the Columbia Ry., Gas & Elec. Co., a deficit in the amount of $49,307.51; the combined statement of the two companies would reflect a balance of net income before depreciation of $352,732.21; no depreciation charged as the earnings are not sufficient to provide for depreciation at 2% of the property value, which rate we consider too low. The Broad River Power Co. depreciation is $336,-715; the Columbia Ry., Gas & Elec. Co. $37,035.60, or a total depreciation of the combined companies of $373,750.60, which would reflect a deficit if such a provision was provided for of $121,018.39 for the combined companies."

Q. Now, Mr. Tatum, that was the complete answer that Mr. Costello made to that question, wasn't it?

A. That was the complete answer to that question, yes.

Q. And the answer that you read before was only a portion of that answer in response to the question of Mr. Belser?

A. Only a portion of it.

Q. Now, if you will turn to page 41, please commence about the middle of the page. You see the question commencing "On February 28, 1927"?

A. Yes.

Q. Now, will you read that question and the two following ones and the answers too. I want to get the exact language of the witness?

A. (Reads:)

"Q. On February 28, 1927, the Broad River Power Company advanced the Columbia Ry., Gas & Elec. Co. to meet its deficit $112,500, what security was that?

"A. No security.

"Q. When is it due?

"A. No due date."

Q. Now, if you will turn to page 53 at the bottom beginning with the question about four lines from the bottom, "It is here on page 26"?

A. Yes.

Q. Didn't you leave the impression that Mr. Costello had [fol. 483] himself made this admission? Will you read it?

A, I don't know what impression I left. I undertook to state it as I saw it here. I recall that there was testimony upon that point.

Q. Didn't Mr. Costello say as a matter of fact, that he didn't know anything about that, the question being the extension of credit to the White Motor Company?

A. I think possibly it would clear it up to read it out just as it is. (Reads:)

"Q. It is here on page 26. Turn to page 25, let us review the situation. 'Q. Didn't you ask the White Motor Co. to extend credit to the Bus C.? Witness: I believe so.'

"A. I believe Mr. Peterman was on the stand then.

"Q. You know nothing about it?

"A. Nothing at all."

Q. You understand from that that Mr. Costello said that he knew nothing about it?

A. Yes, sir.

Q. Now, Mr. Tatum, when you introduced the testimony of Mr. Peterman, you testified, I believe, that you knew that Mr. Peterman was the executive head of the Broad River Power Co. and also the executive head of the Columbia Railway, Gas & Electric Company?

A. I understood so.

Q. That is your understanding?

A. Yes.

Q. And as a matter of fact, he was Vice-President of each one of these companies, wasn't he?

A. That is probably true. I don't know exactly what office he had, but I understood that.

Q. You knew that he held a high executive office in these companies?

A. Yes.

Q. Now, Mr. Tatum, if you will turn to page 70, please. [fol. 484] You understood when Mr. Belser was having you

to add up the current assets and the current liabilities and that in figuring as to whether the company was solvent or insolvent, that you were not taking into consideration among the current assets the property of the Columbia Railway, Gas & Electric Company, didn't you? Suppose you read the answer?

A. There are no physical properties listed in the assets.

Q. Suppose you start at the beginning of that answer that contains the statement of current assets?

A. (Reads:)

"A. This is not taking in the property. I am not qualified to testify as to the value of the property. I am going to give you the current assets and the current liabilities."

I had not read that at the time.

Q. You understood that the statement did not take in the value of any of the property?

A. I understood so.

Q. You knew as a practical matter that the street railway company owned a number of miles of street railway tracks?

A. Yes, sir.

Q. And that that was of some substantial value even as junk, you appreciate that?

A. Yes.

Q. Also the item there for paying assessment, that is given on your figures there as $33,000?

A. Yes.

Q. Isn't it apparent that that is a typographical error, when we see the next statement on page 72 showing those. You will see that the first statement on page 70 was July 31, 1925 and the next one is February 28, 1927 and you will notice that on page 72 the last one, paving assessments, payable in installments, $2,116.60. You would not think [fol. 485] that this company would pay off $30,000 in two years.

A. I don't know.

Q. You have no recollection as to whether Costello said that the paving assessment was $33,000.00 or $3,000.00?

A. My recollection is that Mr. Costello was reading a statement and that this is a stenographic report of that

statement that he read. Of course, I can easily, and all of us can, understanding how clerical or typographical errors may occur. I could not say that this was one.

Q. I think it is. As a matter of fact, on page 71, Mr. King testifies to the value of the property and that was street railway property that was left where it always had been in the Columbia Railway, Gas & Electric Company?

A. Is this Mr. King's testimony?

Q. Yes, it says:

"A. The valuation?
"Q. What was left?
"A. Yes, $1,917,924.98"?

A. He said that was the book value.

Q. Not the book value, but the book figures?

A. Yes, the book figures.

Q. He says, "I am not qualified to testify as to whether it represents the value or not?"

A. Yes, he stated that.

Q. But that was supposed to be the valuation of the Street railway system, that was not included in either of the statements that you read from of 1925 and 1927?

A. I understood it to be as he states, the book figures. I undertook to get the engineer's report from them to ascertain that very matter.

Q. To ascertain the real value of this street railway property?

A. Yes, but I never did get it

Q. Turning to the testimony of Mr. Peterman, page 93, Now, my recollection is that you gave your construction of [fol. 486] the testimony of Mr. Peterman on that point and began with the question "Have you any items showing what they paid the Columbia Street Railway for those poles"? You see that?

A. Yes.

Q. I think you construed that as having Mr. Peterman state that it was simply a book transfer of the property and I would appreciate it if you would read that question and answer as being Mr. Peterman's correct statement on that point?

A. (Reads:)

"Q. Have you any item showing what they paid the Columbia Street Railway for those poles?

A. As far as I know no payment was made, simply a transfer of physical property in the separation of the Railway Co. and the Broad River Power Co."

Q. Will you kindly read the last question and answer on that page?

A. (Reads:)

"Q. You call those poles trolley poles to hold the trolley wires but that is not all the service they perform?

A. A great number of the poles jointly serve the Broad River Power Co. and the Street Railway Co., yes."

Q. And the next one please at the top of page 74?

A. (Reads:)

"Q. Those poles were erected at the expense of what was then the Columbia Ry., Gas & Elec. Co.?

A. Some of them, yes."

Q. Just continue reading?

A. (Reads:)

"Q. When you came to separating and taking over the property, how did you fix the value of such things as that? One company created them, charged with them and you go ahead and transfer them to the Broad River Power Co., what did the Broad River Power Co. pay the Street Car Co. for this equipment?

A. It was not a matter of paying for equipment, it was purely a transfer of physical property.

Q. Who determined what price you should transfer them at?

A. The property which the Columbia Ry., Gas and Elec. Co. retained, the property value was determined by an [fol. 487] outside engineering firm, the actual physical valuation

A. Employed my you?

A. I believe so.

Q. You had this engineer determine what you should pay and it was entered on the books as being the value of the property?

A. They were outside engineers that I believe we employed.

Q. You have the amount of that entry, have you?

A. The auditor could produce that."

Q. You understood that that was the same figures that Mr. King had testified to as being the book figure of $1,917,000?

A. No, sir, I didn't understand that, not at the time. My understanding was that Mr. King gave the book figure and that the actual valuation of the property was determined by an outside firm of engineers.

Q. Didn't Mr. King state in the testimony and didn't you understand that that was the figure that Mr. King was referring to?

A. No, sir, because further in this record somewhere you will find where I ask some of the witnesses, I believe while Mr. Peterman was on the stand, if they had the report of these engineers and my information was that they either had them or could produce them and I asked if they would file that report with the Commission and consent was given to do that and a report was filed in response to that, but it did not give the report of the engineers as I understood that that report showed. I don't see how a valuation for property of that kind could be transferred upon a meager report of that kind.

Q. Your chief criticism of the report was that it was not itemized, was it?

A. Yes, that was one criticism. I have forgotten now just exactly what the criticisms were, but I know that I was very much disappointed in the report. I don't think it showed the facts that I consider a report of that kind ought to show.

Q. You do recall that the report in question was made by Sanderson & Porter, engineers?

[fol. 488] A. I rather think so.

Q. You have heard of them as being engineers of some prominence and reputation?

A. I cannot say that I have, but I am sure that they are.

Q. Now, Mr. Tatum, in answer to a question by counsel as to the admission of Mr. Peterman to the effect that what the Bus Company was doing he was familiar with and what he was doing the Bus Company was familiar with. I wish

you would kindly read his answer. You gave us certain portions of his answer. I wish you would read the complete answer, at the bottom of page 116, and the question by the Attorney General, beginning with the words "The Attorney General?"

A. (Reads:)

"The Attorney General: I asked you when you were on the stand if you were aware that your cars, their routing was considerably curtailed; in other words, having gone to Olympia. they dropped back to Fair and back to Whaley, was there any agreement between you and the Bus Company as to that?

A. No agreement, we were familiar with what each other was going to do the same as the various committees and the Chamber of Commerce."

Q. The impression on that was that that agreement was sort of secret between the Bus Company and Mr. Peterman. I wanted it in definitely that Mr. Peterman said that it was known by other parties. About the history of these cars. You said you had examined the orders and you made the statement that at the time the street cars stopped finally on March 11, 1927, I think it was, that there was no order authorizing the stoppage?

A. I so understood.

Q. I think you are correct about that. I think at that time the order was in effect that you spoke about. When did the Commission order the resumption of service? You do know that in these previous orders leading up to the first order of the Commission authorizing the complete discontinuance, that there had been a number of orders passed [fol. 489] making suggestions as to methods of operation, making suggestions as to the operation on various lines and the curtailment on other lines, making changes in the fare and at various times changing the rates of fare increasing it to ten cents and there were a number of orders made by the Commission and put into effect by the company in what was apparently an effort to put this street car business on a paying basis or break even—haven't you found that in these orders?

A. I found a number of orders along the lines suggested by you in your question.

Q. And so far as you know those orders up to the last order when you were a member of the Commission, refusing to allow them to discontinue, those orders were all carried into effect by the Columbia Railway Gas & Electric Company?

A. As far as I know. There was an order there, some orders, allowing the curtailment of operation, a discontinuance on certain lines, there were orders changing the fare, and orders providing for certain tokens, I believe you say, orders for transfers with the Bus Company. Those are about the orders that I recall.

Q. They extended over quite a period of time?

A. I think probably two years.

Q. And up until the last stoppage, your information was that the orders had been carried out and obeyed by the Columbia Railway Gas & Electric Company?

A. I heard of no disobedience of any of the orders that were previously made.

Q. Don't you recall Mr. Peterman stated there in his testimony in this matter that the Street Car Company was doing what it could, as it saw it, to withhold the complete stoppage of street cars until the bus service became adequate for the community?

[fol. 490] A. I remember Mr. Peterman expressing a desire that some proper, sufficient, or adequate substitution could be found. Now, just whether he made a statement that they did not intend to discontinue until such condition was brought about, I don't recall that just now. However, I wouldn't dispute it; he might have. If you call my attention to it, I would be glad to answer it.

Q. I will read you this question?

A. What page?

Q. I would rather just read it to you: "Q. Were you going to quit when the busses were installed? A. It was the understanding of City Council that if some reputable concern would start operating busses the street cars could be discontinued. Q. This is only a method of going out of business with your company? A. It is a method of getting rid of an unprofitable portion of the business provided the public is provided with some other means of transportation. Q. A sort of painless extraction? A. No, I would not say so." Do you recall that Mr. Peterman testified to that effect?

A. He probably did.

Q. That would indicate that he did state the general position that I asked you, wouldn't it?

A. That would be a matter of construction of that language. You have studied it, I haven't. Your construction may be correct.

Redirect examination.

Questions by Mr. Belser:

Q. Mr. Tatum, I don't find in the record the statement which he filed with the Railroad Commission. Mr. Costello, I think filed it. At least, it was filed that day. Just take this paper now and turn to page 33 of the testimony. If you gentlemen will turn to the page which shows two months for the year 1927 of the expenses and receipts and [fol. 491] I ask you was a copy of that statement, or was that statement filed with the Railroad Commission by the Columbia Railway Gas & Electric Company?

A. I think it is a part of the record.

Q. Turn back to your page 33, you see the question "In 1927 you ran two months"?

A. I see it.

Q. And you see the answer?

A. I do.

Q. You see another question, "Took in $5,855.54, and paid yourself for power $4,561.40", you see that?

A. I see that.

Q. And that was what you testified to as having been the statement made by the Company?

A. Yes, sir.

Q. Will you look on that exhibit, or that statement that you have there in your hand and tell us what that statement shows were the receipts. I ask you first, what was the expense of the power charges for those two months?

A. For the two months, ending February 28, 1927, the total power was $4,561.40.

Q. How does that compare with the statement in this question, or answer that we have in this exhibit that you testified about?

A. It is the same.

Q. What about the receipts that were taken in. How do they compare—how much do they amount to in that statement that you have in your hand?

A. On the statement the total conducting transportation, $5,410.64, for the same period of time.

Q. What are the total receipts any way? The statement for power on that statement is $4,561.40?

[fol. 492] A. Yes.

Q. Do you recall whether the Attorney General had that statement in his hand when he was conducting this examination of Mr. Costello?

A. I could not say that he did, but from the examination, I would conclude that he did.

Q. In 1927, the passenger transportation shows how much?

A. For the two months ending February 28th, and under the head of operating revenue, $5,855.54.

Q. How does that compare?

A. It is the same as the figures in the question referred to by my former evidence.

Q. Comparing those two figures that you have in there, how much does the record show that the Street Car Company produced from what they took in from passengers for that two months period in 1927?

A. It shows that they took in the same amount referred to in the question.

Q. How much is that?

A. $5,855.54.

Q. How much does it show that the power charges for that same period was?

A. $4,561.40.

Q. Now, Mr. Tatum, so that we wont have any misunderstanding of what that $4,561.40 was made up of, will you please say what the items that went to make up that amount was, put under the head of power?

A. 57, sub-station employees, $66.80; 59, I suppose that is the number of the account, Power purchased, $3,900.60.

Q. Do you recall from your recollection of the testimony of these officers, to whom that payment for power was made?

[fol. 493] A. Broad River Power Company.

Q. Now, will you turn to pages 72 and 73 of your record. First of all I go back to the matter of the physical valua-

tion of the property. Mr. Lyles asked you if the record there didn't say something about $1,900,000., the book value—are you familiar with these bankruptcy schedules?

A. Yes; I have seen them.

Q. Will you look on this bankruptcy schedule and look under the head of valuation of their tracks, the book value and depreciation value and tell us first what it says the book value of those tracks is, the bankruptcy schedule?

A. 28 miles of track and overhead trolley, wires, etc., Book value, $1,793,355.11; less reserves $1,622,534.89; net book value $170,820.22.

Q. And what is their estimated salvage value?

A. $40,000.00.

Q. Will you say who that statement is signed by—can you make it out?

A. I could not.

Q. Would you guess that to be Jennison?

A. No, sir, but it is Vice-President. It seems to be the signature of the Vice-President.

(Mr. McLain States that it is the signature of Mr. Buchsbaum.)

Q. You are one of the members of the Railroad Commission and are somewhat familiar with street car systems, I suppose in connection with your business, electric business?

A. Very meager.

Q. Do you know whether or not the railway system in the City of Columbia can be operated without electricity, or is it designed to be operated by electricity?

A. I shouldn't think it would be operated without electricity. It is an electric railway.

Q. Now, turning to pages 72 and 73 again under the tes- [fol. 494] timony of Mr. Costello at the bottom of the page, will you tell us what Mr. Costello said about whether or not he was a general auditor for all of the Barstow interests?

A. That is Mr. King. That is Mr. King's evidence on page- 72 and 73.

Q. In answer to the question having previously answered no, that he was not in any way connected with it, he was asked how about the Spartanburg Bus Co. What was the

answer of Mr. King as to whether he was connected with the Spartanburg Bus Co., at the top of page 73?

A. He said he was not.

Q. That is the Carolina Transit Company and then about the Spartanburg Bus Co.?

A. He said that the controlling stock of the Spartanburg Bus Co. is owned by the South Carolina Gas & Electric Co., which is a subsidiary of the General Gas & Electric Co. That is a Barstow property as I understand it.

Q. Does the General Gas & Electric Company own all the stock of the Broad River Power Co.?

A. So I understand, yes.

Recross-examination.

Questions by Mr. Lyles:

Q. Will you turn to page 74 of the testimony at which point, if you will permit me to say, Mr. Costello was testifying, you see there the question, "will you state what the total of the losses before depreciation"——

Mr. Belser: I don't think they have a right to go into all this testimony in their behalf unless they introduce the entire record. In the first place, we think the matter of loss is incompetent in this case and irrelevant; and further this witness is only subject to cross examination and on the [fol. 495] admissions about which we have asked him and they are now trying to ask him about something other than the testimony in the record.

The Referee: I couldn't lay down any drastic rule. It is cross-examination.

Mr. Lyles: I am examining Mr. Tatum about other admissions in order to get the complete statement of the witness on the subject matter about which Mr. Tatum has already testified.

(Taken subject to objection.)

Q. Referring to this page which is not numbered, but which I show you, a statement which Mr. McLain produced and the witness had before him while giving his testimony, a portion of which you have read already as the testimony or admission of Mr. Costello, I ask you to complete that

by giving us the statement that he made on that page, if you will kindly read it slowly?

A. Page marked Summary of Operating Losses before Depreciation and Interest, Columbia Railway Gas & Electric Co. January 1922 to February, 1927, Incl.

12 months ending December 31, 1922	$144,513.21
12 months ending December 31, 1923	102,477.28
12 months ending December 31, 1924	138,047.05
12 months ending December 31, 1925	87,812.13
12 months ending December 31, 1926	47,630.35
22 months ending February 28, 1927	.....

Q. Isn't that two months?

A. You will have to say. I won't take the responsibility for erasing one of those twos. I wouldn't attempt to do it.

Q. Wouldn't you conclude from what has gone ahead of that that is *it* two months?

A. Well, two months ending February 28, 1927, $10,953.08. Total Operating loss, January, 1922 to February, 1927, Inclusive, $531,433.10.

Q. Now, you have stated that you know from the records [fol. 496] of the Commission that during the last couple of years or so, the Commission was authorizing the Columbia Railway Gas & Electric Co. to make a gradual curtailment of its service?

A. Yes.

Q. You know that as a member of the Commission?

A. Yes.

Q. Now, Mr. Tatum, you have given, so far as my limited knowledge goes, a very correct opinion about the impossibility of operating this street railway system of the Columbia Railway Gas & Electric Company without electricity. I think we are in thorough accord on that. You have stated that you know from your experience with the Commission that the Broad River Power Company is incorporated as a public utility and is subject to the Railway Commission?

A. Yes, sir.

Q. You know under the public utility statutes the Commission could require the Broad River Power Company to furnish electricity to any customer that wants it and has money to pay for it, and not only do that, but could fix the

rate at which that power should be furnished—you know that?

A. I think so, sir.

Q. Mr. Tatum, you understand that the figures that you read showing the operating loss before depreciation and interest of the Columbia Railway Gas & Electric Company from January, 1922 to February, 1927, inclusive, were furnished as a part of the testimony of Mr. Costello at the investigation made by the Commission?

A. My recollection is that as a part of Mr. Costello's evidence, it was put in evidence.

Q. And it was specifically sworn to and he was examined about it on other phases of this record?

A. I think so, sir.

[fol. 497] Redirect examination.

Questions by Mr. Belser:

Q. Now, Mr. Tatum, I want to get you to give us a little help for a minute or two. I am handing you Exhibit No. 28, J. W. W., which you will see by looking on the inside of it, the last three sheets, is a letter from Mr. Barstow, President of the Broad River Power Company to Halsey, Stuart & Co., of New York, and ask you to turn to the last sheet and look and see what are the net earnings shown on that statement of the Broad River Power Co. and subsidiary companies for the years 1923 and 1924?

Mr. Lyles: We think under the rules of testimony that this evidence is not admissible. I am sure that Mr. Tatum has never seen that statement before. I would like permission to examine the witness as to his qualifications as to financial statements.

Mr. Belser: It is very simple.

The Referee: I don't see that it is competent. I see what your purpose is.

Mr. Belser: I want to show a point that your Honor is not yet familiar with.

(Taken subject to objection.)

Q. What is the net earnings shown for the year 1924?

A. I read from this paper, net earnings for the year 1923, $661,501.46; for 1924, $759,515.61.

Mr. Lyles: May I ask what company that is?

Witness: Broad River Power Company, so stated at the top of these figures. These figures relate, as stated on this paper, to Broad River Power Company and its subsidiaries.

Q. Now, Mr. Tatum, taking this statement here as a part of this record of the Railroad Commission, No. 3, of the issue of the Commercial and Financial Chronicle of New York City, January 3, 1925, and referring to page 85, I want [fol. 498] to ask you to look there now and tell us what that statement shows for the operating revenue of the railway department for the year 1923?

Mr. Lyles: Your Honor has not admitted the testimony of the Commission, and furthermore, if you admitted the sworn testimony taken by the Commission, I don't think that that admission would go to the extent of putting in all the newspapers, and it seems to me that the hearsay rule is being most positively violated in the most extreme application.

The Referee: I think you could prove by Mr. Tatum what admissions were mad I cannot see why you should have Mr. Tatum construe the exhibits.

Mr. Belser: I want to ask him to make this calculation in the light of the question which they have asked him about Mr. Costello's statement of the loss. I want to show their own statement of loss made in New York to those people to whom they sold bonds. It shows a variation in the loss for two years and it is a contradiction of the company's own officers with reference to the statement which they have just put in as to the loss, and it is a part of the Railroad Commission's records.

Mr. Lyles: I don't know how accurate they are, but it — a general assumption that if it is in the newspapers it is more or less incorrect. I think to put this witness up and let him go into the record, a statement that he knows nothing about himself, that he did not hear anybody testify about, he doesn't know how it got into the newspapers, he doesn't know who put it there, he doesn't know how accurate it is, it is a violation of all rules of evidence.

Referee: I have to take all the testimony. It doesn't appear to me to be competent. If you feel that you ought to go into this, go ahead. It doesn't appear to me to be competent.

Mr. Belser: I think it is competent.

I asked you, Mr. Lyles, to produce all the statements [fol. 499] that you sent to Halsey, Stuart & Co., on which they made the advertisements for the sale of these bonds, and your copies of it. I can see that there is a detailed statement of the operating income and expenses of the company, which is not incorporated in that letter, but the gross operating or net income as stated in that finally is exactly the same as stated in the letter from Mr. Barstow and that contained an entirely different statement of the loss and that, of course, is a record of the Railway Commission. I want to ask if you have a detailed statement of 1923 and 1924, from which this statement was made?

Mr. Lepine: The letters have been produced, and the only letters which we had and they show on their face. We produced all we had.

Mr. Belser: We waive that for the present. Have you gentlemen got with you a statement which will show for the years 1923 and 1924, the net earnings to be $661,501.46 for the year 1923, and for the year 1924, $759,515.61, the detail from which that is made up?

Mr. Lepine: We have not.

Mr. Belser: We will proceed at this time, but we would like to ask you gentlemen to get for us the detail statement furnished to Halsey, Stuart & Co., along with this letter of December 5, 1924, showing the net earnings for the year 1923 to be $661,501.46 and for the year 1924, $759,515.61. What we want particularly is the statement showing the operating revenue for the railway department as being $229,000.00 for the year 1923, and the operating earnings of the railway department with a difference of $40,000.00 as against $102,000 here in this statement. For the year 1924, the operating revenue as shown by that same statement is $215,000 and for the operating expenses for that year 1924, $266,000, a difference of $51,000, as against $138,047.

[fol. 500] Mr. Lyles: We have no such statement in our possession and we haven't time to get it on this notice.

Reference thereupon adjourned until 10 o'clock, A. M., tomorrow, being Tuesday, March 6th, 1928, at which time Hearing was resumed, there being present, the Referee and the attorneys of records.

Mr. F. A. HOEFER, a witness for the petitioners, was duly sworn and testified as follows:

Direct examination.

Questions by Mr. Belser:

Q. Mr. Hoefer, you are now and have been for several years a member of the City Council, of Columbia?

A. Yes, sir.

Q. I hand you here a resolution which has been offered in evidence, dated June 7, 1927, just read that over. I believe that the record shows that we have already introduced that into evidence and that you introduced that resolution in Council, is that true?

A. That is right.

Mr. Lyles: We ask the Court to continue the objections that we have made to this resolution and the same line of testimony. Your Honor will bear in mind that this was the resolution adopted June 7, 1927, and further as an additional ground we object to any self serving declaration. The City of Columbia, I suppose, is a party to this suit and any reasons or motives or explanations by way of a self serving declaration, we object to.

Referee: Objection continued throughout the testimony.

(Taken subject to objection.)

Q. Mr. Hoefer, I notice that this resolution after reciting that in the opinion of City Council a well regulated [fol. 501] street car service is the best solution of the transportation problem and that the operation of the street car service would render unnecessary the operation of other forms of vehicles on the streets, City Council of Columbia resolved that the present owners of the street railway system be requested to immediately resume operation with the assurance from City Council that they will immediately pass and attempt to rigidly enforce all needful rules, regulations and ordinances, as it may legally pass, as will afford to the street car service full protection in such service, and relieve said street car service from any and all competition; and that a copy of this resolution be forwarded to the Broad River Power Company, whom

Council is advised is the owner of the majority of the stock of Columbia Railway Gas & Electric Company and that they be requested to advise Council, as to whether or not they are willing to resume operation. What was done with reference to notifying the Broad River Power Company of this resolution?

Mr. Lyles: We enter an additional ground of objection and we would like to have it continue to the testimony of this witness and that is that this resolution and the evidence or expected testimony of the witness represents nothing but a conclusion and that it is based on hearsay information and cannot be received as a record.

Mr. Belser: We are going to prove the statements made by Mr. Peterman in the office of the Broad River Power Co.

(Taken subject to objection.)

Q. What was done with reference to notifying the Broad River Power Company of this action of the City Council?

A. They were asked to meet with City Council and go into conference and see if we could not come to some conclusion, to see if we could not restore the street car service.

Q. Who came to see you?

[fol. 502] A. Mr. Peterman and two others. I don't remember the other two.

Q. What office did Mr. Peterman hold, or did he hold any office?

A. I presume he was the head of the office, because he came and represented them and he talked it over.

Q. How much of a conference did you have?

A. I suppose it lasted a half hour.

Q. What, if anything, did Mr. Peterman say in that conference as to whether or not the Broad River Power Co. could restore the street cars if they wanted to?

Mr Lyles: We make the same objection.

(Taken subject to objection.)

Q. What did he say, if anything, as to whether the Broad River Power Company could restore the street car service if they wanted to?

A. I don't recall that he said anything about the power of the Broad River Company. After a lengthy discussion in which I told him that the people, the citizens, were clamoring for a street car service, and that I thought if the power company would restore the street car service, they would be in the good graces of the people so much stronger than they were, and if they didn't restore it I thought that the people being sore with them and down on them, it would possibly work a hardship on them, and after quite a lengthy conference, lasting about a half hour, Mr. Peterman wound up by saying that he was not willing for them to recommend to the Company, or his officials higher up, the restoration of the street car system.

Q. Now, Mr. Hoefer, I hand you here this ordinance passed I believe, on the 24th of January, 1928, and ask you to look at that (Exhibit No. 35); this is the ordinance that was recently passed by Council which after reciting that the ordinance, and so forth, under which the Broad River [fol. 503] Power Co. and the Street Car Company was operating here provided that the company should comply with the rules and regulations of the ordinance of the City of Columbia, and that the ordinance originally enacted in 1886, requiring the cars to run, one car an hour, from 7 o'clock A. M. to 9 P. M. for the present size of the City. The Council thereafter went on and said that they would amend that ordinance, Sec. 553, which was originally enacted in 1886, and reenacted in 1907, to run one car per hour between the hours of 7 A. M. and 9 P. M., that they would require it to run, by saying "it shall be the duty of the said companies to run their cars on all their several lines leading into and from the City of Columbia, as well as all lines within the City, for passengers, so as to provide a service for all points served by said lines of at least one car every thirty minutes from six A. M. to eleven P. M. daily." I ask you whether or not, with reference to that, that is a reasonable schedule for the street car company?

A. I think so. That is the way I think about it. It was worked out that way.

Q. As an amendment?

A. Yes, sir.

Q. Have you been living in Columbia a good many years?

A. All my life.

Q. Have you seen the street cars operate in this community?

A. Yes.

Q. For the last five or six years or more?

A. Yes.

Q. Do you know whether or not, as a matter of fact, during that period where they were really operating them or running them on a minimum on each line on a 30 minute schedule?

A. I think so, yes.

Q. Was the traffic then, and is there sufficient traffic in [fol. 504] Columbia for street cars, if the service is properly given to justify that kind of a schedule?

A. I think if competition were removed, they could operate all right.

Q. What is your business?

A. Outside of City Council?

Q. Yes.

A. I have property that I look after and just recently I have gone in with the Sand Silica Cement and Manufacturing Co., put up a sand drying plant to get out a special brand for filtering purposes at the water words and to get a certain grade of sand. It is graded into different finenesses and used for foundries, what we call sand blast.

Q. What is your opinion as to the value or desirability of the street car service as transportation for the city of Columbia?

A. When I answer that, I am speaking for the people as a whole, the citizens. I think that is what they want. I think a dependable street car service will give to the people the service transportation which they should have.

Mr. Lyles: Of course, the answer of the witness is not responsive to the question. I don't know if he is authorized to speak for the people as a whole.

Q. What is your individual opinion?

A. I don't think there is anything else. If you notice my record since I have been in Council, as you all know, this transportation has been such a deplorable condition, and in my firm opinion the only satisfactory plan of trans-

portation would be a well regulated street car system. There is no doubt about that in my mind.

Q. Now, Mr. Hoefer, can you tell from your observation and experience——

[fol. 505] (Lyles objects, question withdrawn.)

Cross-examination.

Questions by Mr. Lyles:

Q. Mr. Hoefer, you stated that it was your opinion that if competition were removed that the street railway system might be operated, have you ever been in the street car business?

A. No.

Q. Have you ever been in the transportation business of any kind?

A. No.

Q. What character of business have you been engaged in in the past, generally speaking?

A. After serving my time as a mechanic at the Southern Railway shops, I entered the oil mill business with the American Cotton Oil Co.

Q. Just tell us generally what you did?

A. For 27 years, I have practically oil-milled, for 27 years of my life.

Q. So your opinion is not based on any experience in the street car business or in the transportation business of any kind?

A. No, it is not based on transportation. It is based on the experience that I have had with corporations. Of course, in a different line.

Q. Entirely different?

A. Entirely different line, but in our operation of the American Cotton Oil Company, they had mills, they had fertilizer plants, they had ginneries, and some of those operations were losing propositions and others made money and carried those that didn't make money. We never closed them up. We kept them going, we had to, to complete the chain. We kept the chain running and I think I told Mr. Peterman in that conference I thought that if the [fol. 506] street car system was losing money for them, they

were making money on gas and power and lights and it looked to me like they could afford to put a little money in the street car system and operate it at maybe a loss and give the people what they wanted.

Q. In other words, you felt that in your judgment, it wasn't really an opinion, that the street car system could not make any money, but you felt that if there was a loss that should be absorbed in the interest of the public, is that the idea?

A. Yes, the interest of the public they were serving and complete their chain.

Q. Your opinion then was that they probably could not make the street cars pay, they would lose some money, but in the event of a loss, that should be absorbed, that is really what you thought about it?

A. That is right.

Q. You were speaking of the companies existing in Columbia today and that have existed here since you have been a Councilman?

A. You mean the transportation?

Q. Yes?

A. Yes.

Q. And your view is that the street railway is the best way?

A. Yes.

Q. How long have you been in Council?

A. Two years in May, coming May.

Q. Now, when Mr. Peterman came down there—this is Mr. Peterman, is it—stand up Mr. Peterman (Mr. Peterman stands up). That is the gentleman that came down?

A. I think that is Mr. Peterman.

Q. He was the man in charge, you know he was an officer of the Broad River Power Co.?

[fol. 507] A. Yes.

Q. And you also knew that he was an officer of the Columbia Railway Gas & Electric Company?

A. I didn't know that. In fact, I didn't know how he was connected with either company. All we asked for was that we would be glad for the Power Company to have a conference with us and Mr. Peterman came to Council and was spokesman for his committee. He had two other gentlemen with him.

Q. And Mr. Peterman said that he was not willing to recommend the operation of the street car service to his higher officials?

A. I think that is the wording he used, or to his higher-ups.

Q. Your theory is, as you have already testified, that if competition should be removed that the losses of the street car operation could be reduced to such a point that it would not be destructive to a company to run, that is your view, is it?

A. That is right and I also stated to Mr. Peterman, in fact, I told him that we would do everything in our power to remove all competition and help them out in any way we possibly could if they would restore the street car system.

Q. Now, Mr. Hoefer, as a matter of fact, you recall the strike here of the street car men back in 1922—you recall that?

A. Yes, I was then in business. I didn't keep up with things as close as I do now.

Q. You do recall the strike?

A. Yes, indeed. I recall the strike.

Q. You recall that the Street Railway Company refused to take back, as a general proposition, the men who has struck?

A. I had been told that.

Q. That is your general information?

A. That is what I have been told.

Q. You know, as a matter of fact, that a great many of the motormen and conductors who struck did not go back to [fol. 508] work for the street railway company, as a matter of general information?

A. That is what I was told.

Q. And you know that just like you know these other things that you are talking about from your knowledge and observation?

A. When I talk about transportation, what I have said about transportation I got from my personal observation. When I say I worked hard, it has been a problem to try to solve this transportation and we have hammered and hammered at it and we have been accused of playing politics and of doing this thing and that thing. We have worked hard to get the thing straight.

Q. You know that following this strike the motormen and conductors who struck started up this jitney service?

A. I don't know whether the striking motormen started it or not.

Q. Don't you know from your general observation that they started a campaign with badges that had on them "We walk." Don't you remember that?

A. No, I don't remember that.

Q. You know from your public experience that that was the beginning of the jitneys in this community?

A. Yes, I was told that and I presume it is so.

Q. If you have studied the transportation question, the records of City Council will show that that was when it started. The records of your City will show on this very transportation question that that was when the jitneys started and they started licensing jitneys?

A. I think that is right.

Q. And you know, as a matter of fact, that jitneys have been licensed ever since that time?

A. Except up to the present year. They have not been licensed this year yet.

Q. Aren't there something around 200 licenses to jitneys [fol. 509] outstanding now?

A. The licenses of jitneys have now expired except that Council has granted them the privilege of operating without a license up until March 15th.

Q. But they are operating?

A. Not on licenses, their 1927 licenses have expired.

Q. But as an actual matter there are 200 of those licenses?

A. I think it is nearer between 180 and 190.

Q. And they are still in practical effect now under the permission of Council that you have stated?

A. That is right.

Q. And there have been, all during this period, practically that many jitneys, haven't there?

A. It has been ever since I have been on Council; it has run right around that. Some of them, I think, that have got licenses, are not even operating.

Q. Would you just explain very briefly, somebody might read this testimony, through necessity, of course, who does not understand what a jitney is, would you please just explain briefly what a jitney is, so that anybody who reads this will know what you mean by jitney?

A. How do you mean explain it?

Q. What is a jitney? What does it do? What does it consist of? Is it an automobile?

A. It is an automobile, as a rule; some of them are rattle traps.

Q. Some of them are automobiles?

A. Some of them are.

Q. As a practical matter, most of them are cheap automobiles of the make usually of the Ford or Chevrolet or cars of that type?

A. Or second-hand cars, something like that.

[fol. 510] Q. Most of them are not very good automobiles, isn't that true?

A. Yes.

Q. And theoretically, at least, they carry people for 10 cents?

A. Ten cents fare.

Q. And as a matter of fact, a great many people ride in them in spite of all that?

A. Yes, they ride in them.

Q. And they ride in them largely because the jitney delivers them right at their houses and takes them up right at their houses, isn't that a fact?

A. I say if the competition is removed from the street car system, I believe they can operate and I think possibly they would break even or make a little money. Maybe for a little while they will lose a little money.

Q. You mean they will break even on actual operating expenses?

A. Yes, and I think in the course of a short while they would be making money. I believe people would start riding in cars more than they ever have, at least, for sometime.

Q. As a matter of fact, Mr. Hoefer, in the strike in 1922 the street cars did stop for a short time, you recall that?

A. Yes, sir.

Q. And then they went back into service. I think they stopped for some 30 or 60 days, maybe less than that?

A. They stopped for a period of time.

Q. It was a short period, something like two or three weeks or a month?

A. Yes.

Q. And then they started operation again and operated continually up until the time they stopped in March last year?

A. Yes, they operated until they finally went out of busi-
[fol. 511] ness, but the service of the street car system was so poor that people would not ride in them. People would not ride street cars because the service was so poor, the schedule was all knocked to pieces.

Q. And as a matter of fact, within the last year or *h*ear and a half, the number of routes operated has been reduced until when they stopped operating only three lines were running, isn't that correct?

A. That is right.

Q. And that curtailment of service, that stoppage of service, has been going on for a period of about two years, hasn't it, before they stopped?

A. You mean cutting down the service from time to time?

Q. Yes?

A. That is true. I say they cut it down until towards the last we didn't have any service, they wouldn't expect to do anything.

Q. Now, isn't it a matter of fact, that the price of electricity and gas is fixed, that a soppage has to be fixed by the Railroad Commission of South Carolina?

A. Yes.

Q. Isn't it a matter of fact, and wasn't your view of this matter, your personal opinion that you have told us about when you made up that opinion, you thought that they could charge anything they wanted to for gas and electricity?

A. No, I knew they were under the jurisdiction, as far as rates were concerned, under the jurisdiction of the Railroad Commission. I knew that and I believed that the Railroad Commission has allowed you all a rate that you all can exist and make money. I don't believe the Railroad Commission would work any hardship on you to reduce rates where you could not exist.

Q. Do you — that, as a matter of law?

[fol. 512] A. No, I don't know anything about law.

Q. I don't want to take any advantage of you, I hope you understand that, but just as to this opinion that you have stated here, don't you know that it is a principle of rate

making, and that is followed by this Commission, and do you know that under the law that exists that a Railroad Commission in figuring gas and electricity rates will not figure them high enough to take care of losses on the street railway, don't you know that?

A. Now, I believe that the Railroad Commission, or any Commission, doesn't make any difference whether it is Railroad Commission, or whoever has got that under their jurisdiction, would, in figuring a rate fix a rate whereby you could maintain all your operations. I believe they would take that into consideration. I certainly do. I know if I was on a Commission, I would certainly do it.

Q. It is because of that that you think the gas and electric operations could make up for some losses on the street railway by the rates that the Commission allows?

A. If your street car operations were showing a loss and your gas and electricity was making money, I say that it would take care of it, it would work out a rate, the rate would be figured so that you could take care of your loss. I am talking from a business standpoint in the business that I was connected with for so many years. For instance, if we went out and bought cottonseed at a certain price, they would raise the meal and linters and stuff, the product would be raised enough to take care of it when the year wound up, and then if this part was losing money and this was making money, it was thrown into a general fund and reports or a budget was made up and that was charged up and they didn't look at it from only the money making part of it, they took those losses and put them into a pot and they were absorbed, and that is what I say about the street car system.

[fol. 513] Redirect examination.

Questions by Mr. Belser:

Q. Just one or two words in reply. You said something to Mr. Lyles to the effect that the service was poor. Over how long a period did that extend?

A. I don't know just how long, it was gradually going down.

Q. For two or three years?

A. It started sometime ago and as these busses came in here it got worse and worse until they finally quit.

Q. Was the service such as to encourage patronage?

A. Just the reverse.

Q. You know the size of the City of Columbia and the size of other similar cities in the State and in the surrounding territory?

A. Yes.

Q. You have been to Augusta?

A. I have traveled extensively in North and South Carolina, Georgia and Alabama in connection with the American Cotton Oil Company.

Q. Do you know whether street car service has been operating in all the other towns that you have been in the size of the City of Columbia?

A. Yes, and smaller towns than Columbia.

Q. How about Greenville?

A. They are operating there.

Q. How about Augusta?

A. They are operating there.

Q. Anderson, S. C.

A. Operating there.

Q. Columbus, Ga.?

A. Operating there.

Q. Wilmington, N. C.?

A. Operating there.

[fol. 514] Q. Raleigh, N. C.?

A. Operating.

Q. Asheville, N. C.?

A. Operating.

Q. Do you know if Asheville is smaller than Columbia?

A. Yes, it is smaller.

Q. Charlotte, N. C.?

A. Operating.

Q. Montgomery, Ala.?

A. Yes.

Q. Roanoke, Va.?

A. I don't know. I didn't go into Virginia.

Q. Lynchburg, Va.?

A. I don't know anything about Virginia.

Q. Do you know of any other city the size of Columbia in the entire country that has not got a street car service operating?

A. No, I do not know of any.

Q. Do you know of any other city in the State of South Carolina that is smaller than Columbia—Spartanburg is the only other city that approaches the size of Columbia that has not got a street car service?

A. I understand that they have some cars running out from the town, out to the mills.

Q. Do you know whether the street car and gas and electric company operating there is owned by the same General Gas & Electric Company of New York that controls the Broad River Power Co.?

A. I have been told so.

Mr. Lyles: I object as hearsay.

Mr. Belser: It is in evidence.

The Referee: It appears to be hearsay and incompetent.

Q. Now, Mr. Hoefer, talking about whether they could or could not make money if they operated a service so as to [fol. 515] give satisfaction and encourage patronage, what is your opinion as to the street cars, if they really operated the company and if they earnestly operated it as to whether they could make money.

Mr. Lyles: Object as leading. The witness has been examined and he has entirely disqualified himself, so his opinion would be of no effect.

The Referee: Ask your question in a form that is not leading.

Q. What is your opinion as to whether the street car company, if it tried to give good service, could operate at a reasonable profit?

A. Haven't I already stated that? I think I have. I don't think there is any doubt about it. I really think if they put a street car system in operation and put it under good management, they will make some money. I believe that the citizens are willing to help them out in any way now that they can.

Mr. A. P. Walker, a witness for the Petitioners, was duly sworn and testified as follows:

Mr. Belser: We offer this witness to formally prove the correctness of this transcript evidence which he certified to.

Mr. Lyles: It was my understanding that Mr. Darby was to get up a complete series of those orders covering the whole transaction during recent years, do you know whether he did that or not?

Mr. Belser: That was my understanding and he has got a file up here, but I haven't been able to check it over, but it is my understanding that they are there.

Mr. Lyles: It is your understanding that if any of those orders that belong in there are not in there, you are to put them in as a part of that record. In other words, I don't [fol. 516] want to stop and check up?

Mr. Belser: How far back?

Mr. Lyles: I just want to get the complete history. I think it started back in September, 1924. I don't mean to go back to 1922. I think it started up in 1924.

Mr. Belser: We had not expected to put in anything except the evidence and the records of the last hearings. They are the ones we are concerned with, but we have no objection to having all the other orders and proceedings.

Mr. Lyles: The other orders are not in controversy. It is a matter of what the Court thinks about it.

The Referee: I think the Court ought to have it all.

Mr. Belser: Of course, your Honor, we don't concede the validity of any order which tended to authorize the stoppage of any service, especially where there were contracts existing.

The Referee: I think all the orders ought to be before the Court.

Mr. Lyles: I think the record will show that you put them in.

Mr. Edmuns: I don't think the record will show that. We had Mr. Darby to bring the record of the Railroad Commission in regard to the last order of the Railroad Commission under which the Columbia Railway Gas & Electric Company and the Broad River Power Company, one or the other, was ordered to resume service. If Mr. Darby brought and included in that record orders passed previous to this time, and they are a part of the record, I submit that he put them in there and they are not binding on us at all, because we did not direct him to bring those orders.

Another thing, the recent proceeding here on the part of the Railroad Commission in which it is seeking to have by mandamus its order enforced in which it ordered serv-

ice of the street cars to be resumed, and the orders of the [fol. 517] Railroad Commission which are not involved, if they are here and were furnished, we want to advise the Court that we don't think they are binding upon us nor are they a part properly of this record.

The Referee: My view of it is that they ought to go in because the Supreme Court wanted documentary evidence complete. I am not looking at them now from the point of view as to estoppel against anybody.

Mr. Edmunds: The point is, we have no objection to them being in the record, but we don't want to offer those orders.

The Referee: I will put it this way. The Referee requests that the orders be put in evidence.

(Examination of Mr. Walker:)

Direct examination.

Questions by Mr. Belser:

Q. You are the official stenographer for the Railroad Commission?

A. Yes, sir.

Q. And did you take the testimony which was taken at the several hearings before the Railroad Commission on the application of the Columbia Railway Gas & Electric Company to be allowed to discontinue its service during the months of March, April, May and June, 1927?

A. Yes, sir, I did.

It was agreed by counsel that the transcripts of hearings before the Railroad Commission, which had been heretofore introduced in evidence as Exhibit 3, J. W. W., should each be marked separately for identification.

Q. This file of written matter marked Transcript of Hearings March 23, 1927 and March 30, 1927, Exhibit #3, with your certificate on it, is that a correct statement of the testimony as taken down by you at that hearing, or at the hearings therein referred to?

[fol. 518] A. Yes, sir, this is the transcript of the testimony I took before the Railroad Commission at two hearings, March 23rd and March 30th, combined in one folder.

Transcript of Hearings In re Columbia Railway Gas & Electric Co., March 23 and March 30, 1927, heretofore marked Exhibit 3, J. W. W., was marked for identification, "Iden. 1, M. McF."

Q. This folder marked on the outside Transcript of Rehearing June 1, 1927, No. 3, and with your certificate on the back of it, is also a correct transcript of the evidence taken at that hearing on June 1, 1927?

A. Yes, this is a transcript I prepared of the evidence heard at that hearing on June 1, 1927, before the Railroad Commission.

Transcript of Hearing in re Columbia Railway Gas & Electric Company before the Railroad Commission June 1, 1927, heretofore marked Exhibit 3, J. W. W., was marked for identification, "Iden. 2, M. McF."

Q. This folder that I have here marked on the back, Transcript of Hearing held June 29, 1927 and marked as Exhibit No. 3, with your certificate on it, is a correct transcript of the testimony taken June 29, 1927?

A. Yes, sir.

Transcript just above described is marked for identification "Iden. 3, M. McF."

Q. Now, this folder which I have in my hand and hand to you, called Transcript of Hearing held March 18, 1927, containing your certificate, without any exhibit mark on it, is that a correct transcript of the evidence taken at the hearing held before the Railroad Commission March 18, 1927?

A. Yes, sir.

Mr. Belser: I would like to have this marked as a separate exhibit.

[fol. 519] Transcript of Hearing held March 18, 1927, in re Columbia Railway Gas and Electric Company before the Railroad Commission was offered and received in evidence and marked Exhibit 5, M.McF.

Mr. Lyles: Do I understand that counsel again offers all that record in evidence?

Mr. Belser: We are simply proving the correctness of this record.

Mr. Lyles: You haven't again offered it in evidence?

Mr. Belser: We are proving the correctness of this transcript.

Mr. Lyles: You haven't offered it in evidence again at this time?

Mr. Belser: No.

Q. Mr. Walker, turning to page 3 of this record, Exhibit No. 5, and referring to the testimony at pages 3 and 4 and refreshing your memory by what you see there, I ask you if you heard Mr. Costello say what position he held with the Columbia Railway Gas & Electric Co.?

A. Yes.

Q. What?

A. Auditor as I remember, and the record so shows.

Q. What statement or admission, turning to page 8 of the record and refreshing your memory by what you see there, on the last quarter of that page, what admissions or answer did Mr. Costello give to the question "You don't receive transfers from the bus company to your car lines?"

A. "I believe we do," he said.

Q. The further question was asked, "Be sure about that". What was his answer to that?

A. He answered "Mr. Campbell or Mr. Spence could tell. I don't know."

Q. Then in answer to the question "You had your passengers on your cars riding on the bus when he gets off [fol. 520] your car, thereby inviting the bus company to put you out of business"; what was his answer to that question?

A. "I presume that was for public convenience."

Q. In answer to the question, "When you transfer from your line to the bus company you pay them for transporting, a part of your income"? What was his answer to that?

A. "I haven't given any thought to that".

Q. In answer to the further question, "You do know you give transfers to ride on the busses, thereby encouraging the bus company and discouraging your company", what was his answer to that?

A. "Yes."

Q. And what was his answer to the question, "Have you any losses in any other department of your business"?

A. Answer, "No, In our Electric and Gas departments don't operate at a loss."

Q In answer to the question, "How do you manage that", what does he answer?

A. "For the reason it is the more profitable end of the business. I didn't bring any statements with me. I presumed it was purely a Railway hearing; didn't bring any electric and gas statements."

Q. Turning to page 12, what did the witness say in answer to the question, "Now, who are you working for", meaning Mr. Costello, what did he say?

A. "The Broad River Power Co. also the Columbia Railway Gas & Electric Company".

Q. In answer to the question "who operates the street cars"; what did he say?

A. "Columbia Railway, Gas & Electric Co."

Q. And in answer to the further question, "Also the Broad River Power Co.", what did he say?

[fol. 521] A. Answer, "Yes".

Q. And in answer to the further question, "Both companies"?

A. Answer, "Yes".

Q. In answer to the question, "You don't separate the workmen, only separate the street cars from the Gas Company? As a matter of fact it is just one company for other purposes except running the street cars; they pay the bills and pay the employees as one company", the answer was what?

A. Answer, "No, we pay the bills entirely independently. Each company pays its own bills, hires its own help."

Q. In answer to the question, "You are working for two", what was his answer?

A. Answer, "I happen to be".

Q. What was his answer to the question, "Pay you by two separate checks, one representing the Broad River Power Co., the other the Columbia Railway Gas & Electric Co."?

A. Answer, "It so happens the salary I am paid is by one check".

Q. In answer to the question, "Who pays you", what did he say?

A. He said "Broad River Power Co."

Q. In answer to the Question, "To work for the Street Car Co.", what did he say?

A. Answer, "As far as the Railway Co. is concerned, I am only nominally the auditor".

Q. In answer to the question, "But you are actually the auditor", what did he say?

A. Answer, "As far as salary is concerned, the Broad River Power Co. pays the salary entirely".

Q. In answer to the question, "In case there is a deficit at the end of any month who takes care of that", what did he say?

[fol. 522] A. Answer, "The Broad River Power Company, since these deficits, has made advances of money to the Columbia Railway Gas & Electric Company on open account."

Q. Question, "Just kept as a family account"?

A. Answer, "Kept entirely separate as two independent companies."

Q. In answer to the question, "If any of these children come out with the deficit, the Broad River Power Co. pays it", what did he say?

A. Answer, "That was the arrangement at that time".

Q. Turning to page 14, question, "What kind of security do they give for this advance", what did he say?

A. Answer, "No security".

Q. Question, "Just open account", what did he say?

A. Answer, "Yes".

Q. Question, "No demand to pay at any time", what did he say?

A. Answer, "I don't think there has been any definite demand".

Q. Referring to the advances of the Broad River Power Co. to the Columbia Railway Gas & Electric Company, and to the question "When is it due", what was his answer?

A. Answer, "No due date".

Q. In answer to the question "Is that the way they do business", what was his answer?

A. Answer, "It so happens that the Broad River Power Co. owns stock of the Columbia Railway Gas & Electric Company."

Q. Question, "Demand no security between themselves", what was his answer?

A. Answer, "The only thing they have is these advances between themselves".

Q. Question, "That is just a matter of bookkeeping, charged up as a loan from the Broad River Power Co. to the Street Car Co", what was his answer?

[fol. 523] A. Answer, "That is right".

Q. I believe he did say up there in answer to the question "Kept no books of account between themselves", his answer was "Yes"?

A. Yes.

Q. In answer to the question at page 16, "Can you tell us what the salaries of the higher officers are", charged against the Street Railway Company, if any", what did he say?

A. Answer, "Yes, outside of the operations of the Railway, the only other salary or payroll is a portion of the General Manager's time, which I believe is one-third. We have a railway clerk in the General office at a salary of $133.00 per month. It is also charged for legal services, the Railway company pays $100.00 a month; for medical services $75.00 per mnoth, also have four pensioners, a total of $203.34 a month".

Q. Question, "A portion of Mr. Campbell's salary as General Manager", what did he answer?

A. Answer, "His is the only executive officer's time charged against the street Railway Co.".

Q. With reference to the question of whether Mr. Peterman had any connection with the Spartanburg Street Car Co. in answer to the question, "Isn't Mr. Peterman at Spartanburg Manager of that plant", what did he say?

A. Answer, "I understand Mr. Peterman is Vice-President of the South Carolina and North Carolina properties."

Q. Question, "Then there is a connection between the Columbia and Spartanburg properties", what did he answer?

A. Answer, "Purely from the Vice-President having supervision as far as the holding company is concerned."

Q. Turning to page 18 with reference to the rates charged to the Street Railway Company as compared with the rates charged to the mills and in answer to the ques-

tion, "Do you think it is a higher rate, don't you charge [fol. 524] yourself a little higher rate?" What was his answer?

A. Answer, "I believe the rate we charge the Railway is possibly a little higher."

Q. Question, "That would make your expenses more," what did he answer?

A. Answer, "There is a reason for it."

Q. Question, "Let us have it, if that happens to be the case," what did he answer?

A. Answer, "In my opinion the Pacific Mills would take a greater amount of power. Of course, the rate is a sliding scale, so their average rate would be less."

Q. Now, turning to page 19 and with reference to the testimony of Mr. Peterman, what position with the Company did Mr. Peterman say that he held?

A. Vice-President of the Columbia Railway, Gas & Electric Co.

Q. To the question "Also the Broad River Power Co.," what does he say?

A. Aswer, "Yes, sir."

Q. In answer to the question by Mr. Pearman, page 20, "The Broad River Power Co. owns the stock of the Street Railway Co.," what was his answer?

A. Answer, "Yes, all of the common stock."

Q. Question, "Who owns the preferred," what did he say?

A. Aswer, "Part of it is owned by the Broad River Power Co., a part of it is in the hands of the public."

Q. Question, "Do you — what per cent," what was the answer?

A. Answer, "217 shares of common stock is owned by the Broad River Power Co. That is all there is. The preferred totals 433, 324 owned by the Broad River Power Co. 109 in the hands of the public."

Mr. Lyles: I don't know whether in your introduction [fol. 525] of this witness you put in the date of this hearing. If you didn't, I would like to have it in.

Mr. Belser:

Q. This hearing was on March 18, 1927, before the Railroad Commission?

A. Yes, sir.

Q. In answer to the question as to who put up the money to take care of the loss for the street car operations and in answer to the particular question, "The Broad River Power Co. has been putting up monty to pay these losses," what was his answer?

A. Answer, "yes."

Q. Turning to page 23, with reference to the matter of expenses for street paving and in answer to the question if the company could operate at a profit if the paving assessment were relieved, what did he say?

A. Answer, "I believe not, there is very little expense in the operation for paving."

Q. Turning to page 25, and in answer to the question, "didn't you ask the White Motor Co. to extend credit to the bus company," what did he say?

A. Answer, "I believe so, personally I did not."

Q. Question, "In order to put them in business in competition with you," what was his answer?

A. Answer, "That is all I know, the company did request that."

Q. In answer to the question, "Can you give this Commission any reason for your company, starving to death, and yet help put another company in competition with them," what did he say?

A. Answer, "That is the attitude we took from the beginning, when the street cars could not continue, we didn't want to discontinue until some other transportation was provided."

Q. Question, "You wanted to unload on the Bus Company, so your company would have an excuse for getting out," what was his answer?

[fol. 526] A. Answer, "We wanted to discontinue."

Q. Question, "When did you make up your mind to discontinue," what did he answer?

A. Answer, "I do not know."

Q. Question, "You made up your mind to discontinue when making financial arrangements for the bus company to come into being," what did he answer?

A. Answer, "We asked somebody to extend credit, is that a financial arrangement."

Q. "What would you say that was? You do not answer," what was his answer to that question?

A. Answer, "I cannot answer it."

Q. Question, "Was it not a financial arrangement," what was his answer?

A. Answer, "It may be construed so."

Q. Turning to page 26, the question "Has any company with which you are connected paid any losses," what was the answer to that?

A. Answer, "The Spartanburg Bus Co. operated by Mr. Hawkins—he operates the busses here. The Spartanburg Bus Co. pays him $500.00 a month for the operation of that system."

Q. Question, "who pays that," what was the answer to that?

A. Answer, "Paid by the Spartanburg Bus Co."

Q. Question, "What is the connection with your company," what did he answer?

A. Answer, "It is a subsidiary of the South Carolina Gas & Electric Co."

Q. Turning to page 27, and referring to the bottom of that page in answer to the question, "Did you have an agreement with the Bus Co. to discontinue Jan. 1st," what did he say?

A. Answer, "Have no agreement."

Q. Question, "Had the matter been discussed with you," [fol. 527] what did he answer?

A. Answer, "When."

Q. Question, "January 1st or any time," what is the answer?

A. Answer, "We had no agreement."

Q. Question, "Had you discussed it," what is the answer?

A. Answer, "Yes."

Q. The next question, "You had a meeting with them in which you reached the agreement to discontinue," what is the answer to that?

A. Answer, "Not with them."

Q. Question, "Who did you reach it with, it was not with the Commission," what is the answer?

A. Answer, "Had no agreement except among ourselves."

Q. Question, "Who is ourselves," what is the answer?

A. Answer, "Mr. McLean, Mr. Campbell and myself."

Q. Question, "You three took charge of this thing and corrected it, when I asked you in the beginning, you say I am not prepared to say anything, and you take that responsibility," what is the answer to that?

A. Answer "We took the responsibility, yes."

Q. Question, "You did it after you conferred with the Bus Company," what is the answer?

A. Answer, "I would say not. Had no conference with the Bus Company except they were aware the street cars were going to come off."

Q. Question, "How were they aware of it. You say you stopped without conferring with anybody else, how did they get aware you were going to stop the cars? You didn't ask the Commission anything, they didn't know you were going to stop," what was his answer to that?

A. Answer, "There has been no conference with the Bus Company."

[fol. 528] Q. Question, "That company is a corporation, what about the individuals composing that company," what was his answer?

A. Answer, "I have had private conversations."

Q. Question, "With whom, Mr. Hawkins"?

A. Answer, "Yes."

Q. With reference to the cars and lines at the bottom of page 29, the question, "Did it on your own man," the answer was what?

A. Answer, "yes."

Q. Question, "After conferring with Mr. Hawkins," what was his answer?

A. Answer, "After endeavoring to see that the public were taken care of."

Q. And referring to the operation of the busses along beside the operation of the street cars in the same district, the question, "Who gave them permission to operate along beside of you," page 30, what was his answer?

A. Answer, "I do not know."

Q. Question, "Did you object to it," what is the answer?

A. Answer, "I did not personally."

Q. In answer to the question, "Did you ask the Railroad Commission to deny them that privilege? Did you

make any appeal to the Railroad Commission and ask them not to let the busses run parallel to your tracks," his answer is what?

A. Answer, "Not to my knowledge."

Q. In answer to the question, "Did you discuss that with Mr. Hawkins," the answer is what?

A. Answer, "What."

Q. Question, "The question of letting him parallel your lines," what was his answer?

A. Answer, "I would say not, knew he was going to do it."

Q. Question, "Before he did it? You didn't object to [fol. 529] it," what was his answer?

A. Answer, "No, sir."

Q. Turing to page 31, referring to the question of furnishing transfers between the bus company and the street car company, particularly to the question. "You were not thinking about the public then," what was his answer?

A. Answer, "We certainly were, when we arranged to have free transfers between the two systems."

Q. Referring to the advance from the Broad River Power Co. to the Street Car Company, page 31, "Have you taken any security from the Street Car Company for that money the other witness tells had been advanced by the Broad River Power Co. to the Street Car Co.," what is the answer?

A. Answer, "No."

Q. Question, "Purely a matter of book-eeping," what is the answer?

A. Answer, "It is an advance of actual cash on open account."

Q. Question, "You didn't consider that money as going out of the family, all one company, Are you employed by both the Broad River Power Co. and the Street Car Co., and the Gas and Elec. Co.?", what is the answer to that?

A. Answer, "Yes."

Q. Turning to page 32 and in answer to the question, "Although you thought it necessary to get permission every time you chopped off a little here and there, then you stopped the whole system, you thought you could do that on your own," what is the answer?

A. Answer, "It was impossible to continue,"

Q. Question, "You didn't see fit to get the Commission on the 'phone and ask their advice," what did he say?

A. Answer, "We did not, no."

Q. Turning to page 34, referring to the matter of salary paid to the witness Peterman and in answer to the ques-
[fol. 530] tion, "No part of your salary is paid by the Street Car Co.," what was his answer?

A. Answer, "None whatever."

Q. And down further with reference to the same subject matter on the lower part of that page, in answer to the question of the Attorney General, "You say no part of your salary is paid by the Street Car Co.," what did he answer?

A. Answer, "That is correct."

Q. Question, "You work for them"?

A. Answer, "That is correct."

Q. Question, "How does that happen"?

A. Answer, "It comes under my general supervision, and it seemed unreasonable that any expense of that nature should be charged to a company operating with a deficit. Charging my salary would increase the loss."

Q. Question, "Increase the loss, charging that deficit and you were hoping to run the street cars," what is the answer?

A. Answer, "I don't understand that question."

Q. Question, "You say your salary is not paid by the Street Car Co.," what is the answer?

A. Answer, "Correct."

Q. Question, "If you did do that, you, working for the Broad River Power Co. would increase the deficit of the Street Car Co.," what is the answer?

A. Answer, "If any part of my salary was charged, yes."

Q. Question at the bottom of page 35, and referring to the Bus Co. "You said you didn't pay any part of this expense of the Bus Co. If that Bus Co., which is owned by the other companies, are making a profit, it puts money in their pocket," what is the answer?

A. Answer, "It is possible to do so."

Q. Turning to the testimony of Mr. Spence at page 36, [fol. 531] what position did Mr. Spence hold with the Street Railway Co.?

A. Superintendent.

Q. Turning to page 37 and asking him about transfers from the street car company to the bus company, in answer to the question, "You say you gave transfers from your cars to the busses," what did he say?

A. Answer, "They did."

Q. Question, "All the time"?

A. Answer, "We were getting calls for transfers over some places the busses were not operating, got in a mix up and had to stop."

Q. With reference to the general subject of how this matter of arranging about the transfers came up between the two companies, the bus company and the street car company, page 38, in answer to the question, "Did they approach up*i pm* the subject, or you go to see them," what did he say?

A. Answer, "No, sir."

Q. Question, "How did you get together"?

A. Answer, "Got orders from the General Manager."

Q. Question, "Who was he?"

A. Answer, "Mr. Woodring at that time."

Q. And further down, "You got orders to transfer your passengers to the Bus Co.," what is the answer?

A. Answer, "Something like that."

Q. Question, "You gave transfers to them and accepted transfers"?

A. Answer, "Yes, sir."

Q. In reference to the matter of stopping the arrangements about transfers, page 39, in answer to the question, "It was not a fact that you refused to accept transfers from the busses," what is the answer?

A. Answer, "No, we agreed not to accept any more, the Bus Co. and the Street Railway."

[fol. 532] Q. "Your agreement was to stop reciprocal interchange," what is the answer to that question?

A. Answer, "Both, yes, sir."

Q. Lower down on that page in answer to the question, "This reciprocal arrangement was made between the Bus Co. and the Street Car Co. some time after the busses were in operation," what is the ansyer?

A. Answer, "That is right."

Cross-examination:

Mr. Lyles: This testimony, if your Honor please, having been received over the objection of the respondents under the ruling of the Referee, I want to limit my examination of the witness just to a little bit fuller explanation as to some of the admissions. In other words, some of the portions of the admissions that were read might be fuller.

The Referee: You will waive nothing by it.

Questions by Mr. Lyles:

Q. Will you kindly just read the first page, the indication of the hearing, what it was, who was present, just read the first page?

A. (Reads:) "Hearing held March 18, 1927, Before The Railroad Commission of South Carolina, In Re Rule to Show Cause by Columbia Railway Gas & Electric Company, of Columbia, S. C., as to why the operation of street cars in the City of Columbia was discontinued without authority of the Railroad Commission. Present: Of the Commission, Chairman, S. C. Blease, Commissioners Jas. H. Pearman, John H. Nance, Jno. C. Coney, D. F. Sapp, Representing the Commission: Hon. Jno. M. Daniel, Attorney General, Mr. Cordie Page, Asst. Attorney General; Columbia Railway Gas & Electric Company represented by Mr. W. C. McLain, Counsel, Mr. R. L. Peterman, Vice President, Mr. [fol. 533] F. D. Campbell, General Manager; Mr. J. F. Costello, Auditor; Mr. J. W. Spence, Superintendent.

Q. This is a hearing and those were all the parties present at the hearing to which your entire testimony relates in your appearance this morning?

A. Yes, sir.

Q. Now, with reference to the testimony of the first witness, Mr. Costello, will you kindly turn to page 9. I want you to read the question beginning "Don't you know that when your company," that was omitted in your testimony, you read a portion prior to that and subsequent to it and I want you to read this to make the record complete on that point. The last question you read was "How did you manage that," start with that?

A. (Reads:)

"Q. How do you manage that?

A. For the reason it is the more profitable end of the business. I didn't bring a*nd* statement with me. Presumed it was purely a railway hearing; didn't bring any electric and gas statements."

Q. That was the last question Mr. Belser asked you. I want you to read the next question and answer?

A. (Reads:)

"Q. Don't you know that when your company shows a profit on one line and a loss on the other, that would have some bearing on the proposition of whether you could put one line out of business?

A. I construe them as being separate and independent companies.

Q. That was brought about at your instigation?

A. Mr. McLain is more acquainted than I am with that."

Q. Those were other questions and answers by Mr. Costello at this same hearing?

A. Yes, sir.

Q. Turn to page 14, Now, the last answer of Mr. Costello that you read was in answer to the question "No demand to pay at any time" and his answer and you gave it, "I don't think there has been any definite demand." I want you to read in that connection please, the next ques-[fol. 534] tion that was asked Mr. Costello and the next answer that was made?

A. (Reads:)

"Does that show how much the street car company owes the Broad River Power Co.?

A. On February 28, 1927, the Broad River Power Co. had advanced the Columbia Railway Gas & Electric Co. to meet its deficit $112,500."

Q. Now, with reference to the admissions that you have testified to on the part of Mr. R. L. Peterman, I think you were asked the question beginning at page 19, my recollection is that Mr. Belser asked you—you see the heading, "Mr. R. L. Peterman being duly sworn testified as follows"?

A. Yes, sir.

Q. And the question by Mr. McLain, "You are Vice-President of the Columbia Railway Gas & Electric Company"?

A. Yes, sir.

Q. And "Also the Broad River Power Co," "A. Yes"?

A. Yes, sir.

Q. Please read the next after that?

A. (Reads:)

"Q. Since your company took over these properties, state whether or not you have given consideration to the street car situation, whether or not you have done everything that you know how to run the street cars without losing money?

A. We have."

Q. Read the next one?

A. (Reads:)

"Q. Have you from time to time, adopted suggestions made by the Railway Commission, looking toward continuing the service?

A. We have.

Q. What have been the results for the past two years and more of the operations, just generally including all these suggestions, the adoption of them?

A. A continuing loss."

Q. Read the next question and answer just following that please?

A. (Reads:)

"Q. The Attorney General asked Mr. Costello about the rate for power, how does that compare with other power [fol. 535] users of power, the rates given them?

A. About the same as those cotton mill rates; considerably lower than any other rates in effect."

Q. Turn to page 38, Mr. Walker, in the examination of Mr. J. W. Spence, it is my recollection that the last question that Mr. Belser read was "You gave transfers to them and accepted transfers," and the answer was yes?

A. I think that is right.

Q. Will you kindly read the following question and answer, which was asked Mr. Spence at this hearing?

A. (Reads:)

"Q. Who did the order come from to discontinue that practice of taking transfers from the Bus Co.?

A. Got complaints about wanting transfers to places the busses didn't go, that is the reason it was discontinued.

Q. Did you discontinue it or get orders from Mr. Woodring?

A. We discussed that matter and thought it best to discontinue.

Q. Who?

A. Mr. Woodring and myself.

Q. They did still continue to transfer your passengers to the Bus Co.?

A. No, sir, quit the whole thing."

Q. Read the next, please?

A. (Reads:) "Chairman: Mr. Woodring took that up with the Commission."

Q. Mr. Walker, this is the testimony of another hearing, I want to ask you about page 70 of the record of the hearing dated March 23 and March 30, 1927, Exhibit No. 3, Iden. 1, with reference to the item of paving assessment payable in installments and the figures $33,255.97. Have you any way of checking your transcript from records to indicate that that is a typographical error and it should be $3,000.00 instead of $33,000. Have you any way of checking that?

A. I can look up my notes—do you mean $3,000.00 even?

Q. No, $3,255.97, intsead of $33,255.97?

A. I expect that is right.

[fol. 536] Q. Won't you turn to pages 71 and 72 and see if the item there has been reduced to $2,116.60, that it would indicate to your mind that the item originally should have been $3,255.97.

A. Yes, that is too great a disparity between those two items. Of course, I might have misunderstood him. Sometimes a man thinks one thing and says another. I found that out.

Q. None of us are perfect?

A. No, errors creep in every now and then. I know that. I will be glad to look that up.

Mr. Lyles: We dismiss this witness with the understanding that if he finds that to be incorrect, he will let us know it.

Mr. Edmunds: He can just give us the statement and we will incorporate it in the record.

Mr. S. O. Coker, a witness for the petitioners, was duly sworn and testified as follows:

Direct examination.

Questions by Mr. Edmunds:

Q. Mr. Coker, what position do you occupy?

A. Corporation license clerk of the S. C. Tax Commission.

Q. As such do corporations returns to the S. C. Tax Commission and do you keep those on file and have you charge of them?

A. Yes, sir.

Q. I present to you a statement of gross receipts for the year ending January 31, 1925, of the Broad River Power Co., made on the 20th day of February, 1926, is that the original record from your office?

A. It is.

Mr. Edmunds offers in evidence the original statement of gross receipts above referred to and asks permission to return the original to the witness and substitute a copy therefor, there being no objection to this, a copy was submitted for this and other records hereafter offered at this hearing [fol. 537] from the office of the Tax Commission.

Mr. Lyles: Of course, as to the substitution of a copy that is satisfactory, but we wish to continue our same objection to the introduction of this record.

(Received subject to objection and marked "Exhibit 6, M. McF.")

Q. Now, Mr. Coker, I present to you a paper of the Columbia Railway Gas and Electric Company, sworn to on the 20th of February, 1926, by L. F. Pearce and marked filed

February 25, 1926, is that an original record from your office?

A. Yes, sir.

Mr. Edmunds offers statement just above referred to in evidence, and substitutes a copy therefor; Mr. Lyles makes the same objection, and same is received subject to objection and marked "Exhibit 7, M. McF."

Q. Now, I present to you a statement of the Gross receipts for the year ending January 31, 1926 of the Broad River Power Co. filed March 21, 1927, with the South Carolina Tax Commission, is that an original record of your office?

A. Yes, sir.

Mr. Edmunds offers in evidence statement just above described, and substitutes copy therefor; Mr. Lyles makes the same objection, and same is received subject to objection and marked "Exhibit 8, M. McF."

Q. I hand you a paper with relation to the Columbia Railway Gas & Electric Company, sworn to on the 21st day of February, 1927, by L. F. Pearce and marked filed March 19, 1927, with the South Carolina Tax Commission, is that an orginal record?

A. Yes, sir.

Mr. Edmunds offers in evidence the paper just above described, and substitutes a copy therefor; Mr. Lyles makes the same objection and same is received subject to objection and is marked "Exhibit 9, M. McF."

Mr. Edmunds: Subject to the same objection, I desire to [fol. 538] call attention to the records of March 1925 filed in 1926 of the Broad River Power Company that it puts down its place of business as #15 Arcade Building, Columbia, S. C.; likewise the Columbia Railway Gas & Electric Company; and the president of both companies as shown by both statements is W. S. Barstow, 50 Pine Street, New York City; Secretary, C. N. Wilson, 50 Pine Street, New York City; Treasurer, J. P. Campbell, 50 Pine Street, New York City; Superintendent and General Manager of both companies, F. K. Woodring, Columbia, S. C.; Members of the Board of Directors, W. S. Barstow, Lucien H. Tyng, Wil-

liam Buchsbaum, C. N. Wilson, J. P. Campbell, E. W. Niver, William F. Ingold, of New York City. Of the Columbia Railway Gas & Electric Company, Lucien H. Tyng, William Buchsbaum, C. N. Wilson, J. P. Campbell, P. C. Anderson, W. S. Barstow, Thomas Cheyne, O. Clement Swenson, A. A. Cano; all of New York City.

The return made in 1927 contained the location of principal place of business of both companies as #15 Arcade Building, Columbia, S. C.; the same officers and the same addresses, as I mentioned in reading from the records of 1926, except the Superintendent and General Manager of each Company in the 1927 return is F. D. Campbell, Columbia, S. C. The members of the Board of Directors of the Broad River Power Company are named as follows: W. S. Barstow, Lucien Tyng, William Buchsbaum, C. N. Wilson, J. P. Campbell, E. W. Niver, William F. Ingold; of the Columbia Railway Gas & Electric Company, Lucien H. Tyng, William Buchsbaum, C. N. Wilson, J. P. Campbell, G. A. Aronson, W. S. Barstow, W. F. Ingold, W. E. Niver, A. A. Cano.

Q. You say all those are original records from the Tax Department of South Carolina?

A. Yes, sir.

Q. And that you are the clerk in charge of those records?

A. Yes, sir.

Q. And that you brought them here at the request of the [fol. 539] Attorney General?

A. Yes, sir.

Q. In both cases of the Broad River Power Co. there doesn't appear to be any sheet in there like the second sheet of the Columbia Railway Gas & Electric Co. That is the regular sheets, there is nothing else in addition?

A. No, sir, that is the regular form.

Q. Mr. Coker, these forms of the Broad River Power Co. of the return and of the Columbia Railway Gas & Electric Co. seem to differ somewhat. Are those the official forms of the South Carolina Tax Commission?

A. Yes, sir.

Q. One form seems to apply to a street railway company and the other to light and power companies?

A. Yes, that is the light and water works and navigation companies.

Q. And the Tax Commission prepares different forms for those different classes of companies?

A. Yes, sir. And the reason for that is that railroad companies have more or less intra-state and interstate business and the Tax book gross rates are only on the business done within the State.

Cross-examination.

Questions by Mr. Lyles:

Q. Did you have the 1928 returns for those companies in your file?

A. No, sir.

Q. Didn't you, as a matter of fact, grant an extension of time for the filing of those returns?

A. Yes, sir.

Q. And that is the reason they have not been filed?

A. Yes, sir.

[fol. 540] Colloquy Between Referee and Counsel

It is understood between counsel that a copy of the amendment to the charter of the Columbia Electric Street Railway Light & Power Company increasing the stock of the company to three million dollars and changing the name to Columbia Railway Gas & Electric Company, which was dated sometime in 1911 and recorded in the office of the Clerk of Court for Richland County in Book of Corporations "A" at page 338 and which may be substituted in the record as soon as a copy is prepared, and that such copy may be considered as in evidence from this time subject to the objection as to its relevancy.

Also likewise the amendment to the charter of the Columbia Railway Gas & Electric Company, dated on the 5th day of September, 1912, extending the rights and liabilities of the company in perpetuity, such amendment being recorded in the office of the Clerk of Court for Richland County in Corporation Book "U", at page 304 on the 5th day of September, 1912, admitted at this time subject to the same objection by counsel for respondents, with the understanding that the statement by counsel relates only to the identity of

the papers in question and not to the contents or construction thereof.

[fol. 541] Mr. Belser: If your Honor please, we wish to file this petition with the Court and with the Referee and we tender a copy of it to counsel for the respondents and we want to have the privilege of being heard for a few minutes on it. I will just read the petition to you.

(Petition read to the Court.)

I want to add to that statement that the first notice that we ever received to the effect that Mr. Barstow would not come and appear at this hearing in response to this notice and the subpœna and the letter was when I inquired on Saturday, which was the 3rd of March, and respondent's attorneys then made the remarks which are set forth in this evidence to the effect that Mr. Barstow was not expected to come.

(Argument to the Court by Mr. Belser on the above named petition.)

Hearing thereupon recessed for lunch until 3:00 P. M., at which time the Hearing was resumed.

Mr. Belser: Before closing I would like your Honor's permission to call your Honor's attention to Provision 777 of the Code, which it seems to us is applicable. In any case, this Court should find that it has a right to request this officer to attend the hearing.

Mr. Lyles: I was under the impression that you ruled on this same matter the other day and I didn't want to trespass on the time of the Court, unless the Court desires to hear from me, Of course, I shall be glad to respond, if the Court desires me to do so.

The Referee: You may proceed briefly.

Mr. Lyles: If your Honor please, we haven't had time to prepare a written return covering the facts set forth in the petition. We would like to state this with reference to the allegation of Paragraph 3, that a subpœna was served upon Mr. Bartsow, and Mr. Barstow was then in the State [fol. 542] of New York and that the subpœna in question was served upon him merely by putting same in the mail, registering the envelope and being delivered to him in the

State of New York, and Mr. Barstow has never been served with any subpœna of any kind or character with reference to this case within the limits of this State.

Further, that the particular subpœoa that was sent to him in the mail required or requested his appearance here on the 25th of January, the specific date of a former reference, that according to the terms of the petition itself, that subpœna was cancelled, as I understand it, by written communication from plaintiff's attorneys and thereafter on the 24th of February the petition claims that a letter was written to Mr. Barstow in New York requesting him to appear here. I wish to state with reference to that that Mr. Barstow had left New York on the 10th of February and I call your Honor's attention to the fact that at that time the said order of the Federal Court was in effect because the original pleadings were not changed until the 17th of February, and as a matter of fact, the application for the change was made on the 12th of February. The order was signed, I think on Friday, the 17th and the application was made on Monday before that date; and that, as a matter of fact, Mr. Barstow knows personally nothing whatsoever of this proceeding going on at the present time before your Honor. I mention that to show your Honor, in justice to Mr. Barstow personally, and it is only fair to state that he is entirely in ignorance of the fact that his presence is desired here by petitioners' attorneys.

I am reliably advised that Mr. Barstow is president of thirty public utility corporations located in six different States; that, as a matter of fact, it is an impossibility for him to be personally acquainted with the details of the operations of those various companies and that he does [fol. 543] not, as a matter of fact, undertake to do so, because it is impossible.

I would further state that we have present the officers of this company who are fully conversant with all the transactions that are involved or incidental to any of the allegations of these pleadings, even under the broad scope that they were originally framed, and furthermore, that in response to the notice to produce served by the petitioners' attorneys, the respondents have produced all of the records asked for that are in their possession and that are within the power of the respondents to produce under the usual

rules, and I wish to state in that connection that so far as the letters signed by Mr. Barstow are concerned, that the letters were prepared for his signature by Mr. J. P. Campbell, the Treasurer, and Mr. Campbell is present.

I would further state in this connection that Mr. Campbell advises that the summary of Mr. Barstow which is contained on the first page of some of these exhibits, really under the advertisement of the bonding house, was prepared by the respondent by Mr. Campbell and is a correct copy of the summary prepared by him. Of course, we are not undertaking to waive our objection to the competency or relevancy of that evidence.

I am further advised that, as a matter of fact, as to the preparation of these particular statements, that there is no type written letter in the ordinary sense, that the statements are prepared and printed and then than one of the printed letters is signed as constituting the original letter.

Mr. Belser: Would you mind advising us whether the letter of February 24th was received by him later?

Mr. Lyles: I further state that my information from reliable source is that Mr. Barstow is absent from New York pursuant to his ordinary plan of taking a vacation at this time of the year which extends for a month or even two [fol. 544] months, that he does so each year about this time, and he departed on this vacation at the ordinary time and in the ordinary manner, and that he is now located on a house boat somewhere in the Florida waters.

Mr. Referee: I don't believe I care to hear from you, Mr. Lyles. As I understand, the judicial process of the State does not run beyond the borders of the State and I know of no procedure whereby the attendance of a non-resident witness or party may be compelled. The section of the Code cited by Mr. Belser does not seem to me to be pertinent to the question. It is quite true that a party may examine his adversary as a witness and he may assume that the chief executive officer of a corporation is the adversary, but as the Code itself provides, he may be compelled in the same manner and subject to the same rules of examination as many other witness- to testify either at the trial or conditionally or upon commission. In other words, the Code recognizes the limitations upon the extent of their judicial processes and provided that a party might be examined at the trial or de bene esse, which I take it

to be the same as conditionally or upon commission; then there is a further provision under which, in certain cases, the adverse party may be examined before the trial and compelled to attend, but in one of those provisions it even states this, that the party to be examined shall not be compelled to in any other County than that of his residence and so forth.

It seems clear to me that under the provisions of our Code and under the principle that the judicial power of the State does not extend beyond its borders, it would be impossible for me to pass such an order as that for which the petition has prayed. It would, therefore, be necessary for me, so far as my recommendations go, to say that the petition is refused.

[fol. 545] Mr. Belser: We file this notice which was the last notice we served, dated February 27, 1928, but has not yet been filed. Mr. McLain, did you tell me that you had this contract between Broad River Power Co. and the City Development Company?

Mr. McLain: I haven't got a copy. I think I said we had a copy somewhere, but we haven't been able to find the original.

The Referee: Have all the documents mentioned been put in. I remind both sides that the Supreme Court stated that the documentary evidence was incomplete.

Mr. Belser: I ask for the report of the examination of the title of the Columbia Railway, Gas & Electric Company with its various franchise rights and properties made by attorneys for them and submitted to the Broad River Power Company upon its purchase of the stock of the Columbia Railway, Gas & Electric Company in 1924.

Mr. Lepine: Do I understand you want to offer that in evidence?

Mr. Belser: I ask first if you have it.

Mr. Lepine: I take the position as to that that any communication between the attorney and client is privileged and a communication of a report made by an attorney to any other than his client with reference to the franchise and properties of the Columbia Railway, Gas & Electric Company is within the rule of privilege and in answer to the request that I state whether we have it, I say that if

the Court should rule that the evidence were admissible, we have the printed copy of it.

We also object to it on the ground of irrelevancy, together with the same grounds of objection I have already stated and that an opinion of an attorney to his client as to construction of franchise would be merely an opinion and hearsay so far as this case is concerned, and not admissible.

[fol. 546] The Referee: What do you think of that, Mr. Belser?

Mr. Belser: As to the opinion construction of it, we would concede that that part we have no desire particularly for, but the evidence that they had before them, of the obligations which were binding on the corporation is particularly made relevant by the certain provisions of their answer to the effect that they did not know anything about some of these contracts that were alleged, and it doesn't seem to me that the rule of privilege applies to that kind of evidence—privileged communication between counsel and client.

Mr. Lepine: If that is the purpose of it, we will let it go in, but it would be subject to our other objections. We understand that the purpose for which it is offered is to show that the corporation had notice that there were other contracts?

Mr. Belser: I haven't offered it yet.

Mr. Lepine: We take it back then. I understood you had offered it.

Mr. Belser: We have called upon them to produce it. We think we ought to have an opportunity to examine it.

Mr. Lepine: I consider that kind of evidence highly improper and in violation of our rights as privileged communication and when he said he would offer it for that purpose, we were willing to concede it for that purpose, but we don't propose to let him examine it for his information, for under our rights, it is privileged communication, we think.

The Referee: The communication between from attorney to client is generally privileged.

Mr. Belser: We concede that. We have no objection to offering it in evidence. Let it come in.

The Report of Examination of title of the Columbia Railway, Gas & Electric Company, made by Messrs. Elliott & McLain, was offered, and received subject to the same [fol. 547] objection which has been heretofore made by counsel, and marked "Exhibit 10, M. McF."

Mr. Belser: I would like to reserve the right to inquire whether that is a correct copy of the contract which was just above referred to with the right to put it in later if we see fit.

We are about prepared to close our case, subject to our rights with reference to Mr. Barstow. Your Honor understands that we want to reserve our right and we want to take up with the Supreme Court this petition as to whether or not we should be required to close our case before we have an opportunity to examine Mr. Barstow. In other words, we have a right to examine him and have been surprised by his not attending and we should not like to close our case without the opportunity to examine him. We take that position with respect to your Honor's ruling, fully realizing the limitations of the powers to require a witness to at-end. We think it is a matter of public importance which should be decided and passed upon as promptly as possible and we will take it up with the Court.

I would like to get some idea before we finally close on your Honor's ruling on the question of the admissibility of our evidence. I don't recall definitely what your Honor's rulings at this time have been. Of course, I understand that all the testimony is subject to the question, so far as applies to the street car company or the Broad River Power Company; that, I take it, is practically the essence of the case, and I don't ask your Honor for a ruling on that subject right now, but otherwise I would like to sort of check up on what portion of this testimony is admitted subject to your Honor's ruling finally on that phase of the case. Of course, the charters and franchises in the City of Columbia, all of that part of it, I assume is admitted subject to the question of the Columbia Railway, Gas & Electric Company and the Broad River Power Company, and likewise the contracts and so forth of Suburban [fol. 548] Transit Company, The Columbia Land & Investment Company, North Columbia Land Company, Shandon Annex Company; has your Honor verified the ruling of

the admissibility of Dr. Burney's contract with the Town of Shandon; is your Honor ready to rule on that now? If so, we would like to ask you to because we would like to get before you evidence that would.

Referee: My recollection about that is that you hardly connected it up. Those contracts are all in subject to their revelvancy. The only ruling that I have made that would affect the evidence materially is in my judgment you didn't have the right to put in testimony taken before the Railroad Commission.

Mr. Belser: We think we have cured that, at least for our purpose, and we don't care specially for any ruling at this time.

The contracts and agreement with Hyatt and the Town of Eau Claire, those were deeds and the charter; that is a deed from Mr. Newman to the Eau Claire Street Car Co.

Mr. McLain: I checked up the deed on your abstract on page 37.

Mr. Belser: You recall I said sub-paragraph A, page 37 and B, page 38 were included in full and D was excerpts and abstracts and C was a charter from the Eau Claire Co.

Mr. McLain: I have had your abstract checked as to A and B and I understand it is correct, just taking the records of the Clerk's office. I don't know what page it is.

Mr. Belser: You will concede those records are correct and may be taken as deeds as far as the correctness is concerned?

Mr. McLain: Yes, as far as the correctness is concerned.

Mr. Lyles: It is understood that those are subject to the same objection.

Mr. McLain: C doesn't purport to be anything but excerpts. We make this correction on page 39, we insert after the word "attach," about the 6th line, "County Board of Commissioners, Richland County, hereto at-
[fol. 549] tached," insert "and by the certified copy of the resolution of said County Board of Commissioners hereto attached." Now, the next name you see is Columbia and Eau Claire, about the 6th line before that, "Columbia and Eau Claire Railway Company" insert the word "Electric" before "Railway"; and four or five lines below, the line ending with the word "associates," make it "I, F. H. Hyatt for myself and my said associates."

Mr. Belser: Your Honor will recall that Mr. Ravenel was to try to find us a copy of the contract between the Suburbans Homes Company and the people who belonged out at Colonial Heights, and when he found it we were to put that in. That was the understanding.

I really don't like to close my case without my associates here. I wonder if your Honor would be willing to adjourn the reference at this point this afternoon.

There being no objection to this, reference was adjourned until 10 o'clock the following day, being Wednesday, March 7, 1928, at which time the hearing was resumed as follows:

Mr. Belser offers in evidence letter dated September 3, 1925, addressed to the Columbia Railway, Gas & Electric Co. by North Columbia Land Company, by Melton & Belser, Attorneys, and same is objected to upon the same grounds as heretofore stated, and is received subject to objection and marked "Exhibit 11, M.McF".

Mr. Belser: There is an answer to that letter that I have been trying to find, but have not been able to do so. I would like the privilege of putting it in or putting up my brother to prove it.

Mr. McLain states that they will try to get a copy of that letter.

Mr. Belser: Mr. McLain, yesterday, you know, I asked you if you could produce the statement on which the ad-
[fol. 550] vertisement was based in this January 31 issue of the Financial & Commercial Chronicle, giving the operating income and operating revenue of the Railway department for 1923, and 1924, and I understood you to say that you would look into it and let me know, something of that sort. I want to know if you can do that?

Referring to my notice to produce, paragraph No. 14, calling attention to the originals or copies of all advertisements authorized or published by the Commercial and Financial Chronicle of New York City, together with the originals or their copies of letters from the Broad River Power Co. to procure the bond sales through whom the said issue of stocks and bonds was offered for sale to the public and in that connection, referring to the letter which has been introduced in evidence from Mr. Barstow, as Exhibit No. 28, and to the net earnings shown on that letter for the

year 1923 of $661,501.40, and for the year ending June 30, 1924, and the net earnings of $759,515.61, and then comparing that letter with the issue of the Commercial & Financial Chronicle, which is a part of the record from the Railroad Commission and to the advertisement of the Broad River Power Company bonds (which is called a news item by counsel for the other side), this news item or advertisement, as I call it, on page 85 of that issue of the Commercial and Financial Chronicle, likewise shows under the head of gross income for the year 1923, $661,501.00 and for the year 1924, $759,516.00, which amounts are the same, with the exception of the fraction of a dollar, as the amounts shown for the same years in the letter referred to by Mr. Barstow; and further referring to the detailed statement as to how that income figure was arrived at for such years in the Chronicle and the operating revenue for the railway department for the year 1923 of $229,676.00 and to the operating expenses of the railway department for that same year 1923 of $273,457.00, and also to the operating revenue for the railway department for the year 1924 of $215,924.00 and to the operating ex-
[fol. 551] penses for the year 1924 of the railway department of $266,070.00, I ask counsel for the respondents whether or not they have in their possession or are they willing to produce the information, statements, detailed statements, upon which the detailed statements particularly in the Commercial & Financial Chronicle were based?

Mr. Lepine: In that connection, we call attention to the fact that this particular information for which we are requested an explanation, is contained in a news item in a financial journal, and my answer to the request that we furnish the information on which it was based, is that we did not furnish to this journal the information as a basis of the article, but we are willing to concede that the figures set forth in this article are a correct statement of the consolidated earnings of the Columbia Railway Gas & Electric Company for the period therein stated, with the statement that it is a consolidated earning statement and not a separate earning statement, so that the figures as to receipts and disbursements for each department of the Columbia Railway Gas & Electric Company as it existed at that time were exclusive of interdepartment charges, there-

fore, the railroad department of the Columbia Railway Gas & Electric Company as it existed at that time, the receipts and disbursements show receipts from outside sources and payments to outside sources, and the disbursements would not show or do not show any costs for power in the street railway department, nor does the electric department figure include any receipt for power from the street railway department, and we also want it understood in connection with that concession which we are willing to make, that this statement was contained in an issue of January 3, 1925, when the Columbia Railway Gas and Electric Company owned the gas, electric and street railway properties and before the Columbia Railway Gas & Electric Co. conveyed [fol. 552] to the Broad River Power Company its gas and electric properties.

I also call your Honor's attention to the fact that this is a statement for a year ending June 30th, whereas some of these other statements in evidence had their year ending December 31.

The Referee: What year is that?

Mr. Lepine: 1923 and 1924.

Mr. Belser: With reference to that I would like to ask if you are able or willing to produce copies of whatever documentary evidence of financial statements that you furnished to Halsey, Stuart & Co. upon which they based that advertisement, so as to give us an opportunity to examine it.

Mr. Lepine: We answer that, and say that counsel's request assumes an advertisement which is not correct and that we have furnished all the information which was furnished to Halsey, Stuart & Co. in the form of letters.

Mr. Belser: Now, in that same connection and referring back to my notice No. 13 and 14 and referring to the advertisement which occurs on page XXXVII of that same January 3, issue of the Financial & Commercial Chronicle, which is marked Exhibit No. 3, and to the portion of that advertisement which says, "Mr. W. S. Barstow, President of the Company, has summarized his letters to us as follows", and referring particularly to that portion of that summary, which shows under the head of net earnings for the 12 months ending June 30, 1925, $661,501.00; and the net earnings for the year ending June 30, 1924, of $759,-

516.00, I ask counsel for the respondents whether they have or can produce for us the copies of those summaries of his letters?

Mr. Lepine: If the Court please, we can say that the copy of the summary contained on the first page of the letter itself, which is in evidence already over our objection [fol. 553] is a correct copy of the summary.

Mr. Belser: With that concession, we, of course, want to introduce in evidence and have it understood that there is in evidence, that portion of the front page of these exhibits which contain the summaries.

The Referee: They will be in evidence subject to the objection made.

Mr. Belser: Do you make the same concession with reference to these other exhibits?

Mr. Lepine: Yes, with the same objection.

Referee: Admitted subject to objection.

Mr. Belser offers in evidence that part of the front page of paper headed $1,000,000 Broad River Power Company, which is enclosed in brackets, and same is received subject to objection and marked "Exhibit 12, M. McF."

Also offers in evidence that part of the front page of a paper headed $1,485,000 Broad River Power Company, and marked on the inside No. 31, which is enclosed in brackets, and same is received subject to objection and marked Exhibit "13, M. McF."

Also offers in evidence that part of the front page of a paper headed $2,500,000 Broad River Power Company, which is enclosed in brackets, and same is received subject to objection and marked "Exhibit 14, M. McF."

Also offers in evidence that part of the front page of a paper headed $1,485,000 Broad River Power Company, which is enclosed in brackets, and same is received subject to objection and marked "Exhibit 15, M. McF."

Also offers in evidence that part of the front page of a paper headed $1,250,000, Broad River Power Company, Exhibit 27, which is enclosed in brackets, and same is received subject to objection and marked "Exhibit 16, M. McF."

Also offers in evidence copy of letter dated September [fol. 554] 5, 1925, addressed to Melton & Belser by Columbia Railway Gas & Electric Company, F. K. Woodring,

General Manager, and Mr. Lyles makes the same objection, and same is received subject to objection and marked "Exhibit 17, M. McF."

Mr. Belser: I believe that subject to our rights with regard to Mr. Barstow in our petition and to the examination of any records or papers that he may have, called for in our petition, or related to in these letters, as he has written them, we close our case in chief.

Mr. Lyles: It is our understanding that in so far as the Referee is concerned, you have overruled the petition with reference to Mr. Barstow?

The Referee: I think that I have no power to bring Mr. Barstow from outside the State to testify.

Mr. Lyles: What I want clearly understood is that the petitioners have definitely closed their case so far as the Referee is concerned.

The Referee: I can only say about that, that I want to proceed according to the rules as nearly as may be, but the Referee still has his discretion about the matter. Some extraordinary circumstances might arise. As I said in the beginning in fixing the date for the hearing, I suggested that we might take the testimony of the petitioners and then adjourn and some objection was made to that. I then stated that I would not lay down a hard and fast rule, but my suggestion was that we proceed in an orderly way as far as possible.

Mr. Belser: I think that we all understand that so far as the references are concerned the Court has discretion with reference to its way to get at the truth of the matter and if something should occur before a final decision of the [fol. 555] Court, the Court would have a right to reopen the case.

The Referee: I am not going to commit myself in advance, but I am endeavoring to follow the rule.

Mr. Lyles: So far as anything has developed now, the petitioners have closed as far as can be under the general rule?

The Referee: Yes, as far as it can be under the general rule.

Mr. Lyles: We wish to file this Motion to Strike out Evidence, for the purpose of keeping our record entirely clear.

(Mr. Lyles reads the motion to strike out as follows:)

MOTION TO STRIKE OUT

The respondents at this time renew their objections to all testimony which has been introduced in this case by petitioners relating to the existing railway lines and system within the city of Columbia and its suburbs, on the ground that such evidence is irrelevant and that it is entirely outside the issues made by the petitions in this case as amended and construed by the Supreme Court, and move to strike out the evidence so admitted, subject to the objections of the respondents. Respondents also move to strike out all documentary evidence of the same character on the same grounds.

Respondents further renew their objections to all evidence introduced in this matter for the purpose of showing or tending to show a duty resting upon the respondents Broad River Power Company or Floyd D. Campbell to furnish and maintain street railway service in the City of Columbia and its environs over the existing street railway system, the property of Columbia Railway Gas and Electric Company, Bankrupt, and move to strike out such evidence, on the ground that the same is entirely outside the issues made by the petitions herein, as amended and construed by the Supreme Court; and, further, that any relief based [fol. 556] on such evidence would be a violation of the stay order of the Federal Court, because the same would in some way or manner affect the property or street railway system of the Columbia Railway Gas and Electric Company.

Referee: The motion will be duly considered.

Mr. Lyles: We wish to file respondents' position in resting their case.

(Mr. Lyles files Respondent's Position in Resting and reads same into the record as follows:)

RESPONDENTS' POSITION IN RESTING

The respondents in this case consider that, under the pleadings filed by the petitioners, the stay order against

the further proceedings in this case granted by Hon. Ernest F. Cochran, United States District Judge, on February 2, 1928, and the order of the Supreme Court of South Carolina in this matter granted on February 17, 1928, this proceeding now is being maintained for the purpose of compelling Broad River Power Company or Floyd D. Campbell to furnish and maintain street railway service in the City of Columbia and its environs but not in any way or manner affecting Columbia Railway, Gas and Electric Company or its property, and the respondents respectfully insist that this is the only issue that they are called upon to meet under the pleadings in this case as so amended and construed, and that to grant any relief on any other issue would be such a departure from the fundamental principles of justice and legal procedure as to constitute a taking of property of these respondents without due process of law and depriving these respondents of the equal protection of the laws, in violation of the provisions of the Constitution of the State of South Carolina and of the Fourteenth Amendment to the Federal Constitution, the protection of which are especially set up and claimed. The respondents, there- [fols. 557 & 558] fore, desire the Referee to understand that they do not propose to proceed with the introduction of any evidence whatsoever in contravention of any evidence that has been introduced by petitioners and received over the objection of respondents to establish any obligation or duty on the Columbia Railway, Gas and Electric Company to furnish any street car service, or to controvert any evidence that may have been introduced by petitioners, over the objection of respondents, for the purpose of establishing, or tending to establish any obligation claimed to have been assumed by or imposed upon Broad River Power Company or Floyd D. Campbell in any manner to furnish and maintain street car service over the existing system of the Columbia Railway, Gas and Electric Company.

The respondents further insist that there is no evidence in this case which shows any duty on Broad River Power Company or Floyd D. Campbell to furnish any street railway service whatsoever and that to render any judgment

requiring them, or either of them, to furnish any street railway service would be to deprive the respondents of their property without due process of law and would deprive the respondents of the equal protection of the laws in violation of the provisions of the Constitution of South Carolina and of the Fourteenth Amendment to the Federal Constitution, the protestion of which are especially set up and claimed.

The respondents, for the reasons above stated, respectfully submit that there is no evidence in this case which they are called upon to controvert, under the constitutional provisions heretofore referred to, and they, therefore, rest.

After general discussion by counsel for both sides as to the date for argument, it was agreed that March 27, 1928, should be the date tentatively set for that purpose.

Reference thereupon adjourned, until that date.

[fol. 559] IN SUPREME COURT OF SOUTH CAROLINA

In re ex Parte STATE OF SOUTH CAROLINA ex Relatione JOHN M. DANIEL, Attorney General, Petitioners,

vs.

BROAD RIVER POWER COMPANY, COLUMBIA RAILWAY GAS AND Electric Company, and F. D. Campbell, Respondents; ex Parte Town of Arden, City of Columbia, et al., Intervening Petitioners

Proceedings Before Honorable L. M. Lide, Special Referee, at a Hearing in the Supreme Court Room on Tuesday, May 22, 1928

Appearances:

Messrs. John M. Daniel, Attorney General; Cordie Page, Assistant Attorney General; Melton & Belser, H. N. Edmunds, Colin S. Monteith, C. T. Graydon, W. S. Nelson, attorneys for petitioners.

Messrs. George M. LePine, W. C. McLain, J. B. S. Lyles, attorneys for Broad River Power Company, Columbia Railway, Gas and Electric Company, and F. D. Campbell.

Mr. Lyles: Before we do anything in this matter we want to submit a special appearance on behalf of the Columbia Railway, Gas and Electric Company, in connection with a protest, on the ground that the Court has no jurisdiction over the person of that company. I have written this out:

SPECIAL APPEARANCE OF COLUMBIA RAILWAY, GAS AND ELECTRIC COMPANY

Columbia Railway, Gas and Electric Company appears specially and only to protest that this Honorable Court is without jurisdiction over its person and for the purpose [fol. 560] of asking the Referee to dismiss it from further attendance on the references in this cause, upon the ground that this action or proceeding was dismissed as to it by the order of the Supreme Court dated February 17, 1928, and that this Honorable Court has not acquired jurisdiction over its person bringing it back into this action or proceeding by any process that secures to this Company due process of law as guaranteed by the Fourteenth Amendment to the Constitution of the United States, the protection of which is especially set up and claimed.

George M. LePine, W. C. McLain, J. B. S. Lyles, attorneys for Columbia Railway, Gas and Electric Company.

Mr. Lyles: I will ask Your Honor to pass on the motion, in order to know what to do next.

The Referee: The motion is overruled upon the ground, among others, that the matter has already been passed upon by the Supreme Court.

Mr. Lyles: We will file this additional protest and reservation of rights, and I hope after I do this our position will be clear:

PROTEST AND RESERVATION OF RIGHTS

The Referee having overruled the objection of Columbia Railway, Gas and Electric Company that the Court was without jurisdiction over its person, and having refused the motion of said Company to be dismissed from the cause, said Company appears further in the cause under protest,

and, fully reserving and not waiving its claim that the Court is without jurisdiction over its person and that it has been denied the protection of due process of law as guaranteed to it by the Federal Constitution, further relies upon its notice of reservation of rights in this respect duly served [fol. 561] attorneys for petitioners on May 16, 1928, and also filed with the Referee on May 17, 1928.

George M. LePine, W. C. McLain, J. B. S. Lyles,
Attorneys for Columbia Railway, Gas and Electric Company.

The Referee: This will be filed.

Mr. Lyles: Here are our objections to this evidence. I would just like to state my view. It is my understanding that the counsel on the other side will offer this evidence. Now, then, of course we would have the right to object to it on the ground that it would have to be taken over again. We are not objecting to it on that ground. We are objecting to it on certain conditions, that these objections specified be entered. I might say the objections we are making are not to the execution—that is, formal objection to the introduction of any of the instruments or documents—but merely to their competency and their relevancy, and the same objections that were offered to this evidence, as if it were again under the new pleadings.

Mr. Belser: I want to make this statement before I read this, because I do not care for my views on the understanding or nature of this agreement to be in any way influenced by these objections. My understanding of this situation is that all the evidence which we have already taken in this case, and which is part of the transcript of the record in the proceedings herein, is just as available as though it were taken over again at this or any other reference to which this Referee might adjourn it, in pursuance of the order of the Supreme Court of April 12, 1928; of course it being understood, so far as we are concerned, that any proper objections, or any objections which the respondents may have to the evidence, they are at perfect liberty to make to the evidence as taken. But our understanding about the [fol. 562] matter is that we would take all this evidence,

every bit of it, over again, just as we have taken it heretofore, if the other side is not willing to enter into this agreement; but in view of their agreement that it will be considered, we do not want to take the evidence over again.

The Referee: All right. I think, on the reading of the objections, you will see that the agreement as stated by you is so understood by them.

Mr. Belser: I also want to say this; that we reserve the right to put in any additional evidence which we may wish to put in before we close this side of the case and before they take up theirs. Of course we will probably be able to make some announcement about that as soon as we have had opportunity to read over these objections.

OBJECTIONS TO EVIDENCE

The respondents agree that petitioners may offer the evidence heretofore introduced by petitioners in the references under the order of the Supreme Court dated February 17, 1928, the same as if such evidence was now taken de novo and in the regular manner before the Referee, proceeding under the order of the Supreme Court dated April 12, 1928, upon condition that such evidence be offered in whole, including the cross-examination of witnesses, and not in part, and that the following objections shall be considered and effective as if made upon the introduction of such evidence de novo and in the regular manner, the objections already made and entered to such evidence when taken being also continued and not waived:

1. That Columbia Railway, Gas and Electric Company joins in all objections made and entered by Broad River Power Company and F. D. Campbell, or either of them, to such evidence when taken, as shown by the transcript thereof.

2. All respondents object to the opinion and order of the South Carolina Railroad Commission dated July 28, 1927 [fol. 563] (testimony of J. P. Darby, at pages 17 et seq.—particularly page 22 et seq.), upon the grounds:

(a) That the same are void because confiscatory in violation of the due process clause of both State and Federal Constitutions.

(b) That the same are void because based on private contracts which the Railroad Commission had no jurisdiction to enforce.

(c) That same are irrelevant because they afford no basis for a writ of mandamus in this proceeding.

3. All respondents object to all ordinances of the City of Columbia relating to street car operations by any of the respondents and Suburban Transit Company, the same being introduced as Exhibits 5 to 11, inclusive, 15, 34 and 38, upon the ground that they are merely permissive and not mandatory, constitute no contract and impose no duty to operate street cars that can be enforced in this proceeding; and, further, as to the ordinace dated January 24, 1928, that if the former ordinances constitute a contract, which respondents deny, this would be a law impairing the obligation thereof in contravention of the provisions of State and Federal Constitutions.

4. All respondents object to testimony of George W. Newman (pages 33-36), including the grant from George W. Newman et al. to F. H. Hyatt et al., dated April 11, 1896, and the deed from Columbia and Eau Claire Street Railway Company to Columbia Electric, etc., Company, introduced as Exhibit 16, on the ground that such are irrelevant as being res inter alios acta and impose no obligation that can be enforced by mandamus in this proceeding.

5. All respondents object to the North Columbia Land Company contract, with amendments thereto, (Exhibits 16, 17 and 18, pages 38-40), and the testimony of August Kohn relating thereto, as irrelevant because the same impose no [fol. 564] obligation to operate street cars enforceable in this proceeding, and the further ground that such contract is a private contract and not for the benefit of any persons not party thereto and paying no part of the consideration therefor.

6. All respondents object to the contract between Shandon Annex Company and Columbia Railway, Gas and Electric Company (Exhibit 19), and the testimony of W. B. Burney relating thereto, on the ground that the same is irrelevant because it imposes no obligation to operate street

cars enforceable in this proceeding, and the further ground that such contract is a private contract and not for the benefit of any persons not party thereto and paying no part of the consideration therefor.

7. All respondents object to the contract between W. B. Burney and Shandon Annex Company (Exhibit 20) and the testimony of W. B. Burney relating thereto, upon the ground that the same is irrelevant because res inter alios acta and imposes no obligation enforceable in this proceeding, and the further ground that such contract is a private contract and not for the benefit of any persons not party thereto and paying no part of the consideration therefor.

8. All respondents object to the ordinance of the Town of Shandon (Exhibit 22, page 49) and the testimony of C. M. Scott relating thereto (pages 47-62) as irrelevant because res inter alios acta and imposing no obligation enforceable in this proceeding.

9. All respondents object to the contract between Columbia Land & Investment Company and Columbia Electric, etc., Company (Exhibit 23, page 53) and all testimony of C. M. Scott relating thereto as irrelevant because imposing no obligation to operate street cars enforceable in this proceeding, and the further ground that such contract is a private contract and not for the benefit of any persons not party thereto and paying no part of the consideration therefor.

10. All respondents object to the testimony of W. B. [fol. 565] Ravenel relating to representations or promises made by his company (Suburban Homes Company) to purchasers of lots with reference to street car service and the form of contract between such company and such purchasers later introduced (but not marked as an exhibit in the transcript), as being irrelevant because res inter alios acta,

11. All respondents object to the deed from Suburban Transit Company to Columbia Railway, Gas and Electric Company (Exhibit 24, page 77), on the ground of irrelevancy because res inter alios acta and imposing no obligation to operate street cars enforceable in this proceeding.

12. All respondents object to deed from Hyatt Improvement Company to Columbia Electric, etc., Company (Exhibit 25, page 82) as being irrelevant because res inter alios acta and imposing no obligation to operate street cars enforceable in this proceeding.

13. All respondents object to the testimony of Dr. E. O. Watson as to the proposition that F. H. Hyatt et al. made to Columbia College (pages 94 et seq.) as being irrelevant because res inter alios acta and being a self-serving declaration.

14. All respondents object to the testimony of W. M. Addison as to the terms of a contract between Suburban Homes Company and Townsend (pages 102 et seq.) as being irrelevant because res inter alios acta.

15. All respondents object to the testimony of J. H. Keisler as to conversations and dealings with M. W. Mason, representing North Columbia Land Company (pages 120 et seq.), as irrelevant because res inter alios acta.

16. All respondents object to the testimony of W. F. Cleveland as to conversations and dealings with F. H. Hyat (pages 126 et seq.) as irrelevant because res inter alios acta.

17. All respondents object to the testimony of M. W. Mason as to statements to purchasers of lots from North Columbia Land Company (pages 135 et seq.) as being [fol. 566] irrelevant because res inter alios acta.

18. All respondents object to the record of the Leitner case (Exhibit 32, page 144,) as being irrelevant in that the statements of counsel relied on were made for a limited and particular purpose in another case, between other parties, and have no bearing on the issues here.

19. All respondents object to the resolution of the City of Columbia dated June 7, 1927 (Exhibit 33, page 145), because irrelevant in that it was entirely ex parte and is nothing more than a self-serving declaration.

(Note.—The foregoing references are to the transcript of testimony taken by J. W. Wilkinson. The following are to the testimony taken by Miss McFaddin.)

20. All respondents object to the letter of Messrs. Melton & Belser to Columbia Railway, Gas and Electric Company, dated September 3, 1925 (Exhibit 11, page 96), and the reply thereto, dated September 5, 1925 (Exhibit 17, bottom of page 100), as being irrelevant, and particularly to Exhibit 11, because the same is nothing more than a self-serving declaration.

George M. Le Pine, W. C. McLain, J. B. S. Lyles, Attorneys for Broad River Power Company, Columbia Railway, Gas and Electric Company, and F. D. Campbell.

Assistant Attorney General Page: There is one thing I would like to ask here, and understand definitely. I notice in this agreement a statement here—it says, "upon condition that such evidence be offered in whole, including the cross-examination of witnesses, and not in part." Now, of course the whole evidence goes in to the Court; but I just want to be clear on that, that if the Court should rule that any portion of the evidence we had offered is incomp-tent, for any reason, that of course that applies only to that particular part of the evidence, and that the balance of it will [fol. 567] be considered.

The Referee: Yes, sir.

Assistant Attorney General Page: I just want to be sure about that statement there.

The Referee: My idea about it is, it would be treated as if it were taken over.

Mr. Belser: And the cross-examination is treated as their cross-examination, to be offered by them.

Mr. Lyles: I don't see any other suggestions to make.

Mr. Belser: In reference to the objections, I don't suppose it is necessary for me to go into that at this time. They appear to me to be almost entirely on questions of substantive law, many of which have already been passed on by the Supreme Court in the order of reference.

Mr. Lyles: It is our understanding that the Referee will pass on these objections just the same as on all objections, in connection with the Referee's report.

The Referee: Oh, yes, sir.

Mr. Belser: It is understood that the amendments to the charter of the street railway company referred to in the

pleadings, and I think incorporated in our statement of the documentary evidence, are already in evidence, agreed to.

Mr. Lyles: You have put them in. It is right there in the transcript. We are not agreeing to anything. It is in the transcript.

Mr. Belser: It is agreed that it is already in the transcript.

Mr. Lyles: Not agreed at all. It is just in the transcript.

Mr. Belser: We don't want to announce finally that we have closed; but we tentatively do close, inasmuch as Your Honor has tentatively agreed to put the reference off, and will at least allow them until Monday to put up their evi- [fol. 568] dence. We won't have any further evidence at this time and we don't anticipate that we will have any further evidence in our case in chief. Now, we have a motion to strike out the answers of the defendants, which we would like to discuss with Your Honor for just a few minutes. I served a copy on the counsel for the other side, and they advised me they were not formally representing the street railway, and I had it served by a disinterested party by serving it on the now president of the company:

NOTICE OF MOTION TO STRIKE

To Messrs. Elliott & McLain and J. B. S. Lyles, attorneys for respondents:

You will please take notice that the undersigned attorneys on behalf of the State of South Carolina and of the various intervening petitioners herein will move before the Hon. L. D. Lide, Special Referee, at the beginning of the next reference or at the close of the petitioner's testimony herein at the convenience of said Referee, for an order striking out the several returns and answers filed herein by the respondents, upon the ground that the said returns and answers are sham and irrelevant, dilatory and frivolous and do not constitute a defense herein, in that:

1. The said returns and answers, in so far as they question the force and effect of the charter obligations of respondents and of the several contracts with the State of South Carolina, the City of Columbia, the Columbia Land and Investment Company, the Shandon Annex Company,

Dr. W. B. Burney, and the North Columbia Land Company and others, are sham and irrelevant and false and frivolous, and

2. In so far as the said returns contend that the respondents can operate the street car service only at a loss, such alleged loss, even if conceded, does not constitute a defense [fols. 569-572] to the contractural obligation of respondents to operate such street car service, and said alleged facts fail to constitute a defense and the said return is sham and frivolous.

The said motion will be based upon the pleadings herein, upon the statutes creating and affecting the respondent companies and upon their charters and amendments thereto, upon the ordinances of the City of Columbia, upon the original contracts by and between the said respondent companies and the Columbia Land and Investment Company, the North Columbia Land Company, Shandon Annex Company and Dr. W. B. Burney, upon the contract with the State of South Carolina, as set forth in Senate Journal 1925 at page 111, and upon the record of the proceedings in the hearing before the Railroad Commission of South Carolina.

Jno. M. Daniel, Attorney General. Cordie Page, Asst. Attorney General. Melton & Belser, H. N. Edmunds, Colin S. Monteith, C. T. Graydon, W. S. Nelson, Attorneys for Petitioners.

The Referee: Of course I want to give both sides as long as they want to argue anything they want to argue, but the questions raised there go to the whole merits of the controversy, and, frankly, I am not going to decide on them. I will have to overrule the motion.

Mr. Belser: I assumed Your Honor would overrule it. We want it understood we made the motion, and we want to file it, and of course we will object to all testimony that the other side undertakes to offer on the ground that it is incompetent as to losses. I know Your Honor couldn't very well do otherwise, but I wanted to make the position plain.

[fol. 573] IN SUPREME COURT OF SOUTH CAROLINA

In re ex Parte STATE OF SOUTH CAROLINA ex Rel. JOHN M. DANIEL, Attorney General, Petitioner,

VS.

BROAD RIVER POWER COMPANY, COLUMBIA RAILWAY, GAS & ELECTRIC COMPANY, and F. D. Campbell, Respondents; ex Parte Town of Arden, The City of Columbia, et al., Intervening Petitioners

TESTIMONY

On Monday, May 28th, 1928, and continuing through May 31st, 1928, another reference was held in the above stated case before Honorable L. D. Lide, Esq., Acting Special Referee.

Appearances:

J. E. Belser, Esq., H. N. Edmunds, Esq., Nelson & Mullins, Esqs., Cordie Page, Esq., John M. Daniel, Esq., for petitioners.

J. B. S. Lyles, Esq., Elliott & McLain, Esqs., of Columbia, S. C.; George L. LePine, of New York, N. Y., for respondents.

ALFRED WALLACE, sworn.

Direct examination.

By Mr. Lyles:

[fol. 574] Q. Mr. Wallace, how long have you lived in the City of Columbia?

A. Sixty-three years.

Q. Were you connected with the old horse car line street railway in the City of Columbia?

A. Yes.

Q. Were you later connected with the electric line?

A. Yes, sir.

Q. What was the name of the old company that ran the horse cars?

A. Columbia Street Railway.

Q. What was the name of the company that built and operated the electric line?

A. Columbia Electric Street Railway Light and Power Company.

Q. That name was later changed to Columbia Street Railway, Gas and Electric Company?

A. Yes, sir.

Q. What has been your connection with those companies —during what years did you work for them?

A. I started about 1886 with the horse car line.

Q. What capacity?

A. Horse car driver.

Q. You stayed with that company and its successors for how long?

A. I was with them until 1916, with the exception of about five or six years.

Q. What was your last position with the company?

A. I was general manager of Columbia Street Railway, Gas and Electric Company.

Q. Then after 1919 you did not work with the street cars at all?

A. No.

Q. You started back to work as what?

A. Superintendent of Power Plants.

Q. At what time?

A. 1919.

[fol. 575] Q. Do you recall when the old horse car tracks or lines were built in the City? During what years?

A. Yes.

Q. When?

A. About 1896.

Q. 1896 or 1886?

A. 1886 I mean.

Q. At the time the Columbia Electric Street Railway Light and Power Company took over the old horse car lines, you were connected with that company?

A. Yes, sir.

Q. Did you then start to build the tracks for the electric cars?

A. Yes. I supervised the building of the first electric tracks in Columbia.

Q. In cases where you built tracks for electric cars you built along the same lines where there had been tracks for the old horse cars?

A. Yes. We put in heavier rail.

Q. Of course you had to put trolley wires? That wasn't necessary for the horse cars?

A. Yes.

Q. Where did you start the construction of the electric tracks

A. Between Gadsden and Wayne Streets, near the station. The Union Station was on South Gervais Street. The Greenville Railroad crossed there.

Q. That was located on the south side of Gervais Street?

A. Yes, near the intersection of Wayne Street.

Q. You started there and built the electric car line where?

A. We built it up Gervais to Main, up Main Street to the Post Office; from the Post Office to Elmwood Avenue, and from there to the Cemetery Gate.

Q. You started at the old Union Station on Gervais [fol. 576] Street, near the intersection of Wayne Street and then you built east to Main Street?

A. Yes, sir.

Q. Main Street was formerly known as Richardson Street?

A. Yes.

Q. Commencing at the intersection of Main Street and Gervais Street you built North along Main Street as far as Elmwood Avenue?

A. Yes.

Q. Then at the intersection of Elmwood Avenue and Main Street you built west along Elmwood Avenue to Elmwood Cemetery?

A. Yes.

Q. Did you double track any of the line at that time?

A. That line was double tracked to the old post office.

Q. Was it double track on Gervais Street?

A. Yes.

Q. The track was double track on Gervais up to the Post Office at Laurel and Main Streets?

A. Yes.

Q. What year did you start construction?

A. That construction was started—I made a little memorandum—we started operating in 1893. We began to build the track in the fall of 1892.

Q. Then did that line, all the way—that particular line that you have described—all the way from its commencement up to Elmwood Avenue, follow the line of the old Horse Street cars?

A. Yes, sir; followed the line of the old tracks.

Q. What was the next line that you built?

A. We built the line down Laurel. Going east to Pickens and built up Pickens one block and then east on Blanding to the Southern Shops—a little beyond the shops.

Q. At that time there was a depot on Blanding Street?

A. Yes—a waiting room.

[fol. 577] Q. And office building?

A. Yes.

Q. That line was started at the old Post Office Building at the intersection of Main and Laurel Streets?

A. Yes.

Q. That line started at the intersection of Laurel and Main Street and went east along Laurel Street to Pickens?

A. Yes.

Q. Then it turned and went south to Blanding?

A. Yes.

Q. Then turned and went east along Blanding to the old Southern Railway Shops?

A. Yes, that is right.

Q. About when did you start the construction of that line—the electric line?

A. That was started in 1892 and finished it in the spring of 1893.

Q. Where did the old horse car line run along there, Mr. Wallace?

A. On Laurel Street. It continued on Laurel Street out Pickens, it continued on down Laurel street from Pickens to Barnwell, and then went south one block and then west on Blanding to the Southern Railway shops.

Q. The old street car line started at Main and Laurel and went East on Laurel to Barnwell?

A. The old horse car line.

Q. Turned south on Barnwell to Blanding and went to the same destination?

A. That is right.

Q. Was there any horse car line that was built from Laurel to Pickens and then east on Pickens to Barnwell?

A. That is the old horse car line that was built.

Q. Was that the one you have just described?

[fol. 578] A. Yes, except the line on Pickens Street near the Asylum.

Q. How about the line from Blanding Street along Gregg Street to Taylor? Tell us about that?

A. That is the Waverly and Shandon lines?

Q. Yes, sir.

A. Started on Blanding and went down Gregg one block to Taylor.

Q. You went south on Gregg to Taylor?

A. Yes, sir; then east on Taylor to Heidt Street, then down to Shandon Pavilion.

Q. That line started—it was a connection of the other line?

A. Yes.

Q. Went south along Gregg street to Taylor Street, and then went east along Taylor Street to Heidt Street?

A. Yes, sir.

Q. Then turned and went to Gervais Street?

A. Yes.

Q. Did it follow any street?

A. It went over private property from the intersection of Gervais and Heidt Streets.

Q. Did that complete what you might call the electric street car system as you originally constructed it?

A. That was up to that time.

Q. Do you recall at that time what the limits of the City of Columbia were?

A. My impression is that it extended from Arden Street to the River and went a block to Elmwood Avenue on the north to just in front of the Richland Mills.

Mr. Lyles: In 1896 it is admitted that a one mile radius circle on the plat shows the limits of the City at that time; in 1896 the limits then being in the shape of a square two miles in each direction.

Mr. Belser: That is my understanding.

Q. After you built the line down to the old Shandon [fol. 579] Pavilion what was the next line?

A. We built a line from there up Harden Street to Gervais.

Q. That old Shandon Pavilion was the old Columbia Land and Investment Company property?

A. Yes, sir.

Q. When it left the Shandon Pavilion, it went where?

A. It went across some private property to Harden Street.

Q. Then you built north along Harden to Gervais?

A. Yes.

Q. Then you built west along Gervais to Main?

A. That is right.

Q. Do you recall when that line was constructed?

A. That was built in 1895.

Q. That line was made a complete loop or belt line, starting at the corner of Main and Gervais and extended along the streets in the manner you described?

A. Yes, sir.

Q. What was that known as?

A. Belt line.

Q. What was the belt line used for—what purposes?

A. Pleasure travel. Around Gervais and Heidt Streets, that section was used almost entirely for pleasure. We had a pavilion at Shandon and gave dances for the people.

Q. When did you run those cars?

A. In the evening from about three or four o'clock and at night and on Sundays. Only in the summer time did we operate those cars.

Q. No people lived out in there?

A. No, sir; not out in those bottoms.

Q. When was the next extension?

A. From the Old Union Station down to the River, in 1896.

Q. That extended from the Old Union Station to the River?

A. Yes.

[fol. 580] Q. Going west along Gervais Streets?

A. Yes, sir.

Q. When did you build the line from the corner of Main and Richland Street, that extended along Richland to Gadsden in a westerly direction and then in a northerly direction to Elmwood Avenue?

A. In 1897.

Q. That then made a loop with Elmwood that had been previously constructed?

A. Yes, sir.

Q. What was the moving cause that induced you to put in that loop?

A. The Fair Grounds were there at that time. We had to get some way to handle the traffic. We had to have a double track or loop, so we put in the loop.

Q. What stands where the Fair Grounds were then located?

A. The Logan School stands a little to the east of where the Old Fair Grounds stood.

Q. Do you know when the Columbia and Eau Claire Electric Railway Company, the line of that company, was built from Elmwood Avenue out to the junction of Monticello Road?

A. About 1897, or '96—somewhere about that time.

Q. The City Limits at that time ran just to Scott Alley?

A. Yes, sir, one block north of Elmwood Avenue.

Q. That line was later purchased and operated by what?

A. Columbia Electric Street Railway, Light and Power Company.

Q. When did you build the line that started at the intersection of Gervais and Sumter Streets and went down to the present Union Station?

A. That was built in 1904 or '05. No, that was built in 1900.

Q. That line started at the intersection of Gervais and Sumter Streets and ran west on Sumter Street to what street?

[fol. 581] A. Pendleton, then it turned and ran west on Pendleton to Main, and then it turned and ran south to the Union Station just below the Union Station where we had our car barn.

Q. Where was it located at that time?

A. The corner of Rice and Main Streets.

Q. That street car track that ran down Main Street ran on across the railroad tracks just before reaching the car barn?

A. Yes, sir.

Q. Did you make any change at that particular point later on?

A. Yes, sir; about a year later we took up those tracks and come down and went across Assembly Street and went across the viaduct and come back into Main Street.

Q. Instead of crossing the steam railroad tracks right on Main Street you made a little loop from the car barn that ran out Assembly Street across the railroad on the viaduct and came around north of the Union Station?

A. Yes, sir.

Q. The line that was built from the Union Station out to Gramby mill—when did you build that?

A. In 1901 or '02.

Q. That line extended from the Union Station out to Gramby Mill?

A. That is right?

Q. It started at the Union Station on Assembly Street and ran South to Whaley and then it turned west on Whaley and went to its destination?

A. Yes, sir; went on the Gramby Mill.

Q. That line, very near its terminus, was later extended to the Fair Grounds?

A. Yes, sir; down Olympia Avenue.

Q. When was that made?

A. A year afterwards.

Q. About 1902?

[fol. 582] A. Yes, sir; about a year afterwards.

Q. From the junction of Assembly and Whaley Street and running west on Whaley Street, and then turning down Olympia Avenue and going to the New Fair Grounds was later taken up?

A. Yes.

Q. When Whaley Street was paved?

A. The Whaley Street section was taken up when the street was paved, and the other section was taken out later.

Q. After you built the extension to the Fair Grounds you later built another extension that went to the Fair Grounds in a different way and at one time formed a loop with the Whaley Street Line?

A. Yes, sir.

Q. When was the second line to the Fair Grounds built?

A. In 1907.

Q. That ran over Whaley and Assembly streets?

A. Yes, sir; down Whaley Street to the Fair Grounds.

Q. It formed a loop with the other line that went down Whaley Street and Olympia Avenue?

A. That is right.

Q. The last line that was built in 1907 is still there?

A. Yes, sir; that is there yet.

Q. Do you recall when you built the first line along Divine Street in Shandon?

A. That was built in 1903 or '04.

Q. How did that line originally run?

A. That line there went to Shandon Pavilion, crossing some private property up into Divine Street.

Q. Then it ran east along Divine Street to what point?

A. About Maple Street, or just about where the present school house is.

Q. I believe that is Poplar Street?

A. I believe that is right.

[fol. 583] Later on that particular line was turned down from the junction of Divine and Maple, and later it was turned down and went to Garners Ferry Road?

A. That is right.

Q. That left one block that was taken up?

A. That is right.

Mr. Lyles: The street spoken of as Poplar Street is probably Holly Street.

Q. Mr. Wallace, the line from the intersection of Gervais and Heidt Streets, that ran across private property to the old Shandon Pavilion, was abandoned about what year?

A. About 1912.

Q. You doubled tracked along Harden Street, starting at the intersection of Gervais and Harden out to Divine Street?

A. Yes, sir; we did that later.

Q. About what time?

A. Double-tracked that line from Gervais to Divine I think about 1914.

Q. About 1916, wasn't it?

A. Maybe I am wrong. I was under the impression it was 1914.

Q. Then you double-tracked that line—did you continue the double track on out to Divine Street?

A. Yes, sir.

Q. You took out the little corner that cut across by the old Shandon Pavilion, commencing at Harden Street and running to the old Pavilion to Divine Street?

A. That is right.

Q. And in place of that ran the line going south all the way along Harden Street to the junction of Divine Street and went east along Divine Street?

A. That is right.

Q. This Divine Street Line was extended to Camp Jackson about when?

[fol. 584]. During the War. In 1917.

Q. It was the summer of 1917?

A. Yes, sir.

Q. During the War that line was extended to where?

A. Heaths Curve.

Q. Where is that?

A. Just where it turns off on the Garner's Ferry Road.

Q. The Garner's Ferry Road is in effect an extension of Divine Street?

A. That is right.

Q. When did you build the extension from Hyatt's Park?

A. Ridgewood Club—that was built in 1904 or 1905. I was not with the Company when it was built.

Q. You came back?

A. Yes. I know that line was put in. I was in Columbia.

Q. Do you recall when the Wales Garden line that ran from the intersection of Harden Street and Saluda Avenue to the City Limits was extended?

A. I don't know when it was extended.

Q. You know the Wales Garden Line?

A. Yes, sir.

Q. When was that line built?

A. Either 1914 or 1915.

Q. Did you have anything to do with the construction of the line known as the Shandon Annex Line that ran from the junction of Divine and King Streets?

A. Yes, sir; I supervised the building of that line.

Q. Do you recall when that line was constructed?

A. Constructed in 1910.

Q. You acted, in the construction of that line, under the instructions of whom?

[fol. 585] A. Mr. William Elliott.

Q. He was what then?

A. General Manager of the Street railway at that time.

Q. Did you get any extra compensation for your work in that construction?

A. I got ten per cent of the payroll.

Q. Did you have anything to do with the construction of the lines of Hyatt Improvement Company to Columbia College?

A. Yes, I built that line.

Q. You built that line to the Hyatt Improvement Company?

A. Yes.

Q. When was that line built?

A. 1906 or '07.

Q. Wasn't that about 1905, Mr. Wallace?

A. Yes, that line was built in 1905. Then about a year afterwards, or a little later, we built a line from in front of the College on through Arden to the present line, where it stops now.

Q. Over the property of North Columbia Land Company?

A. Yes.

Q. Do you recall when the Colonial Heights line, commencing at the intersection of Bull and Laurel, running thence North on Bull Street to the City Limits, and thence to Colonial Heights, was constructed?

A. 1907.

Q. The Ervin Park Line, when was that built?

A. 1913.

Q. I believe it started at the intersection of Gervais Street and Huger Street, and thence North on Gist Street to its intersection with Laurel, is that correct?

A. That is right.

Q. Its terminus was Ervin Park, where the City Water Works is located?

[fol. 586] A. Yes.

Q. The line that commenced at the intersection of Gervais and Pickens Street and ran North on Pickens to Hampton Avenue then East on Hampton Avenue to Gregg Street, thence North on Gregg Street to Taylor Street, where it joined the Old Waverly line, do you recall that?

A. Yes.

Q. When was it constructed?

A. 1913.

Q. I believe that line was taken up when Pickens Street was paved?

A. Yes, that line was discontinued.

Q. When Taylor Street was paved, the old Waverly-Shandon Pavilion line was taken up along Taylor Street?

A. Yes, sir.

Q. In place of that line there was another line constructed out to Gervais or out to Taylor and Heidt Streets?

A. Yes, through Harden Street.

Q. That line was an extension of that line that commenced at the intersection of Gervais and Harden Street?

A. Yes.

Q. It ran thence North on Harden Street to Hampton Street?

Q. Yes.

Q. East on Hampton Street to Heidt Street?

A. Yes.

Q. Thence North on Heidt Street to Taylor Street?

A. That is right.

Q. When you started operations of the electric cars, I believe that was along about the fall of 1893?

A. Spring of 1893.

Q. Do you recall what wages or compensation you paid the motormen and conductors?

A. Seven cents an hour.

[fol. 587] Q. I believe you stated that you were general manager in 1916?

A. Yes.

Q. Of the Columbia Railway, Gas and Electric Company, of the Street Railway Department?

A. Yes.

Q. You left in 1916?

A. Yes.

Q. What were you paying your motormen and conductors when you left in 1916?

A. Thirty-two cents.

Q. When the street railway was first built what other transportation facilities were available in Columbia?

A. Horses and buggies and wagones, and bus lines. Busses from the depots to the hotels.

Q. All of those were horse drawn vehicles?

A. Yes.

Q. When you built the line that we all used to call the belt line running out by the old Shandon Pavilion, what was the result with reference to street railway travel?

A. We got a lot of pleasure travel which we did not have before.

Q. Did the people ride that line a good deal?

A. Yes, in the evening we were loaded.

Q. Lots of people would take their children and go out there?

A. Yes.

Q. Which was the first street in Columbia that was paved?

A. In front of the Union Station on lower Main Street, and paved on up Main Street to Pendleton Street, and then they got in front of the State House and paved on to Elmwood Avenue.

Q. What year was that?

A. 1907 or 1908.

Q. Had you constructed that line down to the Union Depot at that time?

[fol. 588] A. Yes, we had a line in there. We double-tracked that line at that time. We only had single track in there, and we double-tracked it.

Q. They were very careful to follow the street car line in doing the paving?

A. They sure were. All the paving done in Columbia for a long time was done there.

Q. You had to take care of your tracks and three feet on each side?

A. Yes, sir.

Q. That paving was when?

A. 1907 or 1908. We had a little trouble and they held us up on Main Street for about six or seven months.

Q. Was there a pavilion at Hyatt's Park?

A. Yes, sir, and at the end of Ridgewood line too.

Q. Didn't they have a park there?

A. Yes, they had a few wild animals out there—a little zoo.

Q. Was that when Mr. Clark was Manager?

A. Yes.

Q. Do you remember when he had the private car, and it was all lit up (I mean the car)?

A. Yes.

Q. After those Hyatt's Park and Ridgewood lines were built, what happened to pleasure travel?

A. It increased on those lines considerably.

Q. It wasn't much fun riding in a horse and buggy over the roads and streets at that time?

A. No; there was no clay and sand roads then.

Q. What about the automobile—what happened to pleasure travel when the automobile came into use?

A. It stopped it. Put us out of business.

Q. When did pleasure travel cease on the street railway? [fol. 589] A. About 1912.

Q. Prior to that time, tell us the extent of the pleasure traffic, as to whether your regular cars would accomodate it, or you would have to put on extra cars?

A. We had to increase our car service to handle the traffic. The traffic was so heavy in the evenings after those tracks were built we had to put on extra car service.

Q. From your observation and recollection, what would you say as to the amount of pleasure travel?

A. Pleasure travel was greater than the regular travel.

Q. What time of day did pleasure travel take place?

A. About four o'clock in the evening.

Q. How long would you run the cars?

A. Twelve o'clock or later.

Q. At the time that the line was constructed out to College Place from Hyatt's Park, you remember that construction?

A. Yes.

Q. It was constructed first to the College and on out to the present terminus?

A. Yes, sir.

Q. What was the situation out there with reference to people living there at that time?

A. I don't think we had more than four or five houses along that line.

Q. What happened after the construction of the line?

A. It built up considerably.

Q. At the time the Shandon Annex Line was constructed, how about the number of houses out in the section served by that line?

A. My impression is that there were no houses in that section at all, with the exception of Mr. Sumter Moore,

who lived in the house that belonged to Mr. George Davis.

[fol. 590] Q. An old country house?

A. Yes, an old country house.

Q. This college Place line that you speak of, when that was constructed from Hyatt's Park out to College Place, thence North on to Columbia Land Company's property—that was North Columbia Land Company's property?

A. That is what I understood.

Cross-examination.

By Mr. Belser:

Q. You say you ceased your connection with the company about 1916?

A. Yes, sir.

Q. Have you had any connection since that time?

A. I came back to work in 1919 as Sup rintendent of Power Plants.

Q. Are you still working for them?

A. I am working for Broad River Power Company.

Q. The Power Company in the City?

A. Yes, sir.

Q. Do you have any recollection of the total milage of this system which was constructed in the City Limits at the time the lines were constructed?

A. No, I couldn't say. Ten of these blocks in Columbia are considered a mile.

Q. The line from Elmwood Avenue out to Hyatt's Park was constructed by Eau Claire Street Railway Company?

A. Yes. It was built by Whit Marshall for those people.

Q. It was taken over afterwards?

A. Yes; taken over afterwards by the Street Railway Company.

Q. Mr. Marshall was president of the Street Railway Company at that time?

A. Yes.

Q. He arranged to build the lines with the Eau Claire people?

A. Yes, sir.

[fol. 591] Q. Then it was taken over by Columbia Street Railway Light and Power Company?

A. Yes, sir; Columbia Street Railway, Light and Power Company.

Q. You were working, of course, for the Columbia Street Railway, Light and Power Company?

A. Yes.

Q. About how many miles was that line?

A. About two miles, approximately.

Q. You afterwards built a line from Hyatt's Park on out to Columbia College?

A. Yes.

Q. How long is that?

A. About a mile.

Q. You built that for Hyatt Improvement Company?

A. Yes.

Q. That was afterwards taken over?

A. Yes, sir; by the Columbia Street Railway, Light and Power Co.

Q. Then you afterwards built the line leading out into North Columbia Land Company into College Place?

A. Yes.

Q. North Columbia Land Company paid the expenses?

A. That is my impression.

Q. Do you recall what it cost to build a mile of street railway?

A. No, I don't.

Q. Have you any idea?

A. No, I have no idea.

Q. About a mile was built on this North Columbia Land Company property?

A. That is right.

Q. Four or five miles constructed out of the City?

A. Yes.

Q. The line out into Shandon, which was the property that used to belong to Columbia Land and Investment Com-
[fol. 592] pany, was about a mile long too?

A. The property that went out Divine Street went through property of Columbia Land and Investment Company going east?

Q. Yes, sir?

A. Yes, sir; about a mile.

Q. The line which was built out into Shandon Annex from the intersection of Gervais and King?

A. King and Divine you mean.

Q. That was paid for by Shandon Annex Company?

A. I got my money from Mr. Elliott.

Q. He was General Manager of Street Railway Company?

A. Yes. He gave me the money to pay off the labor, and paid me for that work.

Q. Did you know anything about Shandon Annex Company, what it had to do with it?

A. I know they were connected in some way, but I don't know the details.

Q. As soon as you got the line built it was operated by Columbia Railway, Gas and Electric Company?

A. I am not sure about that. I think for a while it was operated by Shandon Annex People. We operated it afterwards. They rented a car and come up to Divine Street and connected with our line there.

Q. Are you sure about that?

A. No, I am not sure about that.

Q. You built the line for the Columbia Street Railway, Light and Power Company?

A. Yes.

Q. The lines were immediately after that, or shortly after that, operated by the Street Railway Company?

A. Yes; the Street Railway Light and Power Company.

Q. Over that Shandon Annex Line?

[fol. 593] A. Yes, sir.

Q. I believe you said just a few minutes ago that when these lines were built down into North Columbia and Shandon Annex there were comparatively few houses?

A. Yes.

Q. Soon after that people built out there very considerably?

A. That is right.

Q. They had practically, in those days, no other means, except the street railway for transportation?

A. Horse and buggy and wagons.

Q. Putting the street railway out there and its operation was quite an asset for people to buy out there?

A. Sure.

Q. Likewise, the line that was built to Colonial Heights, you built that too?

A. Yes.

Q. The Street Railway Company took it and operated it immediately after it was built?

A. That is my impression; they took it over and operated.

Q. What was the condition at Colonial Heights?

A. There were not very many houses. You go through the Asylum property, which is nothing, just before you got to Colonial Heights property there were two or three houses there.

Q. Who did you get the money from for that line?

A. From Mr. Elliott.

Q. You don't know where he got it from?

A. No, I do not.

Q. You of course recall, or know, that whenever you built tracks within the City limits, you made application and got permission from City Council?

A. Sure.

Q. Also when you took up tracks?

[fol. 594] A. I don't know about that. I never took up any.

Q. You know the company made application to build tracks within the City?

A. Yes.

Q. About 1906—did you ever have anything to do with the contract between North Columbia Land Company and Columbia Street Railway Light and Power Company?

A. Never saw the contract.

Q. At that time, in 1906, the system was very largely complete, except for the Colonial Heights and Shandon Annex Lines?

A. That is about right.

Q. You were running a pretty good schedule too about, and making connections?

A. That is right.

Q. In 1906, when this contract was entered into, which provides that the company undertake to furnish and maintain a street railway system and furnish connections with the other lines, it was possible to get the line at the end of North Columbia Land Company property and run out to Maple Street in Shandon?

A. Yes.

Q. The fare at that time was five cents?

A. Yes.

Q. In 1906, was the line built to Olympia?

A. In 1904, I think it was built—1901 and '02 down to the Fair Grounds.

Q. Let's take the period of 1908—the line had also been built to Colonial Heights?

A. Yes, sir.

Q. Also to Ridgewood?

A. Yes, sir.

Q. Olympia and out to the furtherest point in Shandon?

A. Yes.

[fol. 595] Q. It was built down Gervais Street in 1908?

A. Yes.

Q. In those days the fare was five cents? All over?

A. Yes.

Q. You could get transfers from one end of the line to the other for five cents?

A. Yes.

Q. The only substantial addition to the system, which was made after 1909, was made in 1910, when the line was built out to Shandon Annex?

A. Shandon Annex, yes.

Q. This contract says that they shall furnish transportation of one fare, or not more than five cents, etc. (continues reading contract). So that in 1906 and 1908, it was possible to get on this system and go from one end of it to the other, except to the line of Ervin Park and the line to Shandon Annex?

A. Yes.

Q. In 1910, when the contracts were made with the Shandon Annex Company, the system was pretty well complete? In those days transfers were furnished from any one line to any other line?

A. Yes.

Q. I notice this contract provides that the Railway Company will charge one five cents fare, etc. Do you remember anything specially about the transfers being given?

A. No.

Q. You were manager at that time?

A. I was Superintendent at that time and Manager from 1914 to 1916.

Q. So that anyone at that time was entitled to a transfer to any other point served by the line at that time for one fare?

A. That is right.

Q. You recall that the Company had a lawsuit and tried [fol. 596] to get out of paying or doing the paving up on

North Main Street, on part of the property which used to belong to the Street Railway Company?

A. I don't recall that. When was that?

Q. I believe the order of Judge Smith was dated in 1906?

A. I don't recall that.

Q. You know the company always did its part of the paving?

A. We did our share of it, all right.

Q. You seemed to be about one of our oldest inhabitants, Mr. Wallace. When this system was originally put in here in 1890, what was the size of Columbia?

A. I don't think it was over ten thousand.

Q. About 1900, what had it come to be then?

A. It was almost double. I am just giving you my memory. I don't know positively.

Q. You won't say what the size of the city was in 1910?

A. It is just guess work with me.

Q. The City is at least double what it was in 1910?

A. I should think so. That is guess work too, though.

Q. You were not with the company in 1921?

A. I was with the Power plant—not with the Street Railway.

Q. You know, as a matter of fact, they built an extension to the street railway lines as late as 1921?

A. I don't know that.

Q. They seem to have been authorized to make an extension from the line on Harden Street out Heidt Street and so on?

A. I believe I do recall that.

Q. They were extending the system as late as 1921?

A. That is when they changed it at Taylor Street and come around the other way.

Q. As long as you were connected with the Street Railway Department, you say they had heavy traffic in the afternoon?

[fol. 597] A. Yes, sir; up to 1912.

Q. You were not connected with them in 1917?

A. No.

Q. When they built the line out to Camp Jackson?

A. No.

Q. Are these dates you have been giving about the construction based on your recollection or records?

A. Just from my memory. They might be a little bit wrong—a few months one way or the other.

Redirect examination.

By Mr. Lyles:

Q. I believe you testified that this line that was constructed in 1921 from the corner of Gervais and Harden, running north on Harden to Hampton, thence East on Hampton to Heidt and thence North on Heidt one block to Taylor, was the line that was su-stituted for the old line that ran out to Taylor?

A. Yes.

Q. It reached the same destination?

A. Yes; it reached the same line.

Q. Going back to the old horse car street railway, and for the benefit of the Court, particular reference to sections 579 of the Revised Ordinances of 1920, which is the ordinance as codified, relating to the old street railroad, dated October 12, 1886, that covered or gave permission for a track along Gervais Street from the Old Union Depot to Sumter Street—was that horse car track ever constructed along Gervais Street, along Main Street to Sumter Street?

A. There was no horse car line along Main to Sumter.

Q. Thence along Sumter Street to the Chapel of the University—was there such a track as that?

A. No.

Q. Also from Gervais Street Along Sumter to Lady, [fol. 598] thence along Lady to Marion to Plain, thence along Plain to Richardson (Now Main)—was there such a track?

A. No.

Q. Was there a track built along Marion to Henderson Street?

A. No.

Q. Was there a track built along Henderson to Blanding Street?

A. No.

Q. Was there a track ever constructed from Elmwood Avenue going along Elmwood Avenue in an easterly direction from Main to the Asylum?

A. No.

Q. There was an old horse car track from the intersection of Larel and Pickens that ran north along Pickes to the Asylum?

A. Along Elmwood Avenue.

Q. When you built the electric tracks, there was no such track as that built?

A. No.

Recross-examination.

Mr. Belser:

Q. About these lines that were constructed out into these little suburban developments—North Columbia, Shandon and Shandon Annex—the same poles that were constructed for carrying the trolley wires also carried the wires for furnishing lights?

A. I can't say that. I don't know.

Q. Don't you know they used the same poles?

A. I don't know—they might have used them in places, but whether they were constructed for that purpose, I don't know.

William Elliott sworn.

Direct examination.

By Mr. Lyles:

Q. Your name is Mr. William Elliott?

A. Yes, sir.

Q. You are a practicing attorney and counsellor-at-law, [fol. 599] of the Bar of Columbia?

A. Yes, sir.

Q. Senior member of the firm of Elliott & McLain?

A. Yes, sir.

Q. Your firm is at present attorneys for Broad River Power Company?

A. We are.

Q. What connection did you have with, first, old Columbia Electric Street Railway, Light and Power Company—that was the name of the company up to 1912, and then the same company, known as Columbia Railway Gas and Electric Company?

A. I was employed as attorney in 1905. I became manager in 1905, June— having the title of Vice President and General Manager. From September 1910 to 1919, I was one of the attorneys of the company.

Q. The record shows that the charter was amended in 1911, increasing the capital stock and changing the name to Columbia Railway Gas and Electric Company?

A. Yes.

Q. We will speak of it under the name of Columbia Railway Company, meaning the company under the former name and latter name as well. Mr. Elliott you say that you were Vice President and General Manager during what period?

A. From June 1905 to September, 1910.

Q. Did you actively supervise the affairs of the company during that period?

A. Yes.

Q. Who was your Superintendent?

A. Alfred Wallace, after about a month. I think I got Wallace back in July, 1905.

Q. He continued with you as such how long?

A. As long as I was manager or Vice President there.

[fol. 600] Q. During that period the Columbia Railway Gas and Electric Company did what general lines of business?

A. It did an electric lighting, or power business, it did a street railway business, and through its connection with the Columbia Gas Light Company, under the name of the Columbia Gas Light Company, it did a gas business.

Q. Was the Columbia Gas Light Company a separate corporation?

A. Yes, up to the time, I think it was taken over by the Broad River Power Company.

We offer in evidence the charter of the Columbia Gas Light Company, marked Exhibit A-1.

Q. What were the relations between Columbia Gas Light Company and Columbia Railway Gas and Electric Company?

Mr. Belser: All of those matters are subject to our objection.

The Court: Yes, sir.

Mr. Edmunds: If there is any relationship between the two, it must be a matter of record.

Mr. Lyles: We intend to offer in evidence the two leases.

The Court: We will admit that subject to the objection

Q. What was the general relation between Columbia Gas Light Company and Columbia Railway Gas and Electric Company?

A. The Gas Light Company was owned by a Baltimore or Philadelphia concern—I don't now recall which. It was bought about 1904, before my connection with the company.

Q. I mean with reference to gas furnished in the City of Columbia?

A. It was operated as a separate company until about 1912, and then it was leased to Columbia Railway Gas and Electric Co.

Q. From 1912 the Gas property was owned by what company?

A. The physical property was owned from 1912 on by the Columbia Gas Company.

Q. Who was it operated by?

[fol. 601] A. Columbia Railway, Gas and Electric Co.

Q. Under lease?

A. Under a lease.

Q. As a matter of fact there were two leases?

A. Yes, there were two leases.

Q. The other property—What were the three departments in which the Columbia Railway, Gas and Electric Company conducted this business?

A. Electric Lights, Power and street railway.

Q. After it acquired the lease of the gas property, did it have a Gas Department?

A. Yes, sir.

Q. As a practical matter, wouldn't—As a practical matter weren't the power and electric business operated as one department?

A. The books were kept separately, but under the direction of the same superintendents and so forth.

Q. As to the departments?

A. As to those two departments.

Q. Was the same true with reference to the Street Railway Department?

A. Yes.

Q. After the Columbia Railway, Gas and Electric Company acquired the gas business, was that true as to the gas department?

A. Yes; There were certain general expenses pro rated. Except for that they were operated separately.

Q. With your connection with the company, both as Vice President, General Manager and Attorney, are you familiar with the relations between the company and the City of Columbia?

A. Yes; between 1905 and 1919, I would say yes to your question.

Q. Are you familiar with the ordinances that have been introduced in evidence with reference to, or having relation [fol. 602] to the street car tracks and generally the street cars?

A. Generally, yes.

Q. Did the Columbia Railway, Gas and Electric Company, or the Columbia Gas Light Company ever acquire any permission from the City of Columbia with reference to the construction and operation of its poles and lines for the transmission of electricity and for the construction, operation of its pipes, mains, etc. for the gas business?

Mr. Belser: I think that is a matter of record, and I don't think this witness is qualified to testify about it.

Mr. Lyles: I am trying to prove the non-existence of any documents relating thereto, except as contained in the ordinances, except as shown by the documents—that is the charters and ordinances.

The Court: We will take it subject to objection.

Q. Did you catch the question I went to ask you?

A. You asked me in effect if we operated under any franchise from the City of Columbia. We had no franchise from the City of Columbia. We operated under the acts of the legislature and the ordinances of the City.

Q. Do you know of any agreement or franchise or permission from the City of Columbia relating to the Gas and Electric Departments or business, except as found in the ordinances and statutes?

A. I know of nothing else, except, I will say, as found in the ordinances as codified in 1907 and 1920. Yes, I will

answer your question, because I acted under both these compiled ordinances.

Q. You know of nothing except that contained in these ordinances in these particular books?

A. No, I know of nothing else.

Q. Supplementary to the last question I asked you, will you tell me if in your representation of the Broad River Power Company and their interests in recent years you have had occasion to make a further search and refresh [fol. 603] your mind as to the existence of any franchises relating to gas and electricity?

A. Yes, I have looked into it very carefully.

Q. With the same conclusion that you have stated on the stand?

A. Yes; I know of no franchises that existed up to 1919, except as I have stated.

Q. At the time that the lines were built into the section that has since been incorporated as the town of Eau Claire and Town of Arden, the street railway lines and the lines for the transmission of electricity for various purposes, the pole lines, were those communities incorporated?

A. My recollection is that none of them were incorporated, with the possible exception of Eau Claire, as to which I am not clear.

Q. Did the Columbia Railway Gas and Electric Company ever acquire any franchises from either the Town of Eau Claire or the Town of Arden relating to their street railway or electricity?

Mr. Belser: We object to that on the same ground. The question of what is a franchise or what is not is a legal question.

The Court: Go ahead.

Witness: I have no recollection of any such up to 1919.

Q. When the line was built along Divine Street, that was prior to the incorporation of the Town of Shandon, was it not?

A. That is my recollection. The line was built on Divine Street and Shandon before my connection with the Company.

Q. Did you ever see this ordinance of the Town of Shandon? Will you look at that ordinance at page 138?

A. This is that Shandon Annex ordinance?

Q. Yes, sir?

A. Yes, I have considered it. I never saw that original ordinance book, but I saw a copy of it.

Q. Do you remember your contract with the Shandon [fol. 604] Annex Company, relating to the construction of the Shandon Annex line?

A. In general terms, yes.

Q. Did you handle the negotiations between the Columbia Railway Gas and Electric Company, which was then the Columbia Electric Street Railway Light and Power Company, that resulted in a memorandum of agreement or contract of May 30th, 1910?

A. I was largely instrumental in making the contract, and involved in the negotiations, but not altogether so.

Q. Give us in your own way a brief history of what happened with reference to the matter?

Mr. Belser: We object to that—their relations between the Street Railway Company and Shandon Annex Company and Dr. Burney and also the Town of Shandon are fully embodied in contracts. Any preliminaries which led up to it are entirely irrelevant.

Q. I am asking about the performance under the contract?

A. They wanted a line built, and we had negotiations with them, and finally we exchanged a written memorandum on the subject, and we finally built the line in consequence of that written memorandum.

Q. Did you ever have anything to do with Mr. Burney with reference to that matter?

A. I have not.

Q. Your transactions with reference to the matter were with what persons?

A. Mr. Julius Walker and Mr. Ravenel.

Q. Did you have any conversation with Dr. Burney with reference to that contract or performance under the contract?

A. I can't recall any.

Q. Did you at that time, at the time of the execution of the contract, know that Dr. Burney had made a contract with Shandon Annex Company?

A. I didn't know anything of him, other than it was [fol. 605] going through his land, until we began building operations.

Q. Was the line actually constructed, as provided in the contract?

A. Yes, the line was constructed as set forth in the memorandum.

Q. Did you take a deed for the line?

A. No.

Q. Was one tendered?

A. My recollection is one was tendered and we declined to receive it.

Q. Why?

A. Because it provided there should be a right of way, and the ordinance passed by the Town of Shandon to the Shandon Annex Company contained onerous obligations, which the Columbia Railway Gas and Electric Company was never willing to accept.

Mr. Belser: I object to that testimony for the reason that the witness is undertaking to speak of onerous obligations in the contract itself. The contract has been duly delivered and introduced in evidence. I object to the evidence about the deed being tendered and not exhibited. If there was a deed, it should be introduced in evidence.

The Court: I think he can testify the deed was tendered. Of course the objection will be considered further.

Q. Will you tell us whether you stated your objections to Mr. Ravenel?

A. We discussed them fully.

Q. Will you refresh your mind by reading the provisions of this contract and explain to the Court what you meant in connection with the ordinance?

A. I can testify without reading the contract.

Q. Go ahead and testify?

Q. They required us to grade the whole of King Street in some form; they required us to furnish lights, at three [fol. 606] different places; they required us as a condition to receiving the Shandon Annex Ordinance to accept in that ordinance a requirement to operate a fifteen minute schedule on the Shandon Line, which was not acceptable, especially at that time, but chiefly because of grading of King Street and furnishing of free electric lights.

Q. The ordinance runs from the Town of Shandon to the Shandon Annex Company?

A. Yes.

Q. What were your objections, in view of that fact?

A. We objected to the ordinance because the ordinance would have been assumed by the Street Railway Company, and the Street Railway Company would have taken up those obligations and been subject to its requirements.

Q. A deed was tendered from Shandon Annex Company?

A. Yes.

Q. Did you state your objection to Mr. Ravenel?

A. Very forcibly.

Q. Did the Railway Company ever accept the deed?

A. Not to my knowledge.

Q. Did they ever accept or agree to the ordinance of the Town of Shandon, found on page 138?

A. We never did.

Mr. Belser: We object to that.

Q. Did the Columbia Railway Gas and Electric Company, or its predecessor ever acquire title to the Shandon Annex Line in any way?

A. Not that I know anything about.

Q. You were the man in charge of the transaction?

A. I was.

Q. The think was handled with you?

A. By me. Mr. Robinson, as President, was in on the negotiations, but I was the man handling it all the way through.

[fol. 607] Q. You stated that your active position as General Manager of this Company continued until what date?

A. September, 1910.

Q. After that date you continued as attorney until 1919?

A. Yes, sir.

Mr. Lyles: We wish to introduce the contract between the Columbia Electric Street Railway Company, party of the first part, and Columbia Land and Investment Company, party of the second part, which is dated the 16th day of April, 1900, marked Exhibit A-2.

Also the deed from the Columbia Land and Investment Company to the Columbia Street Railway, Light and Power

Company, which is dated the 30th day of June, 1909, marked Exhibit A-3.

Mr. Lyles: I would like to state in connection with those two documents, that our purpose in introducing them is to complete the documentary evidence showing the relations between these two companies. Petitioners have introduced either one or two agreements between these two companies, and to show the complete relations between the two companies and to complete the documentary evidence covering same, we wish to introduce these two papers.

Mr. Belser: So far as the introduction of the instruments themselves, we have no objection to them. So far as the statement to complete the transaction, we have no knowledge whether it is complete or not.

Q. You were manager of the company at the time the deed was made in 1909?

A. I recall closing up the thing with Mr. Shand, as President of the Company.

Q. Do you recall when the Town of Shandon was incorporated?

A. I do not. It was previous to my going in the office of General Manager.

[fol. 608] Q. I think the record of the minute book shows an election at page 6 of the Minute Book of the Town of Shandon, held March 5th, 1904, for the purpose of incorporating the Town and electing an intendant and four wardens. Fifteen votes were cast. The incorporation received fourteen, and the name of the Town of Shandon fifteen. You have no way of refreshing your mind as to when the Town of Eau Claire was incorporated?

A. No. It was pretty early. I do not know whether before or after I entered on my duties as General Manager.

Q. As to the Town of Arden?

A. I don't think that was incorporated until I was in the office of General Manager. I have no clear recollection of that.

Q. You never came in contact with the towns as municipal corporations?

A. I had no dealings with them. I had some dealings with Eau Claire and some dealings with Shandon. I can't recall any other that I had any dealings with.

Cross-examination.

By Mr. Belser:

Q. Mr. Elliott, you state from your recollection about this Town of Shandon Ordinance that the ordinance required a fifteen minute schedule. That was one of the objections you had to it?

A. That was one of the minor objections.

Q. What were some of the major objections?

A. We had to grade King Street on the outside of the track right of way; we had to put up three lights at three different corners.

Q. As a matter of fact, the money for building that line was furnished through Mr. Mahon?

A. I don't remember. All of my dealings were with Mr. Ravenel and sometimes with Mr. Walker.

Q. This contract between Shandon Annex Company and [fol. 609] Dr. Burney provides the money is to be deposited, six thousand dollars each, in the hands of Mr. Berry and Mr. Mahon;—both Dr. Burney and Mr. Ravenel testified they turned the money over to Mr. Mahon?

A. I couldn't say.

Q. The money really came from somebody else than the Street Railway Company to build the line?

A. Yes, sir; we were furnished the money.

Q. Dr. Burney testified that the contract shows that he was to pay the entire cost of the grading of King Street. Do you recall whether or not he did do that?

A. I recall something about that. It was something late in the situation. I was surprised at Dr. Burney paying for it.

Q. You did find out?

A. I found out it was so after we had done considerable grading.

Q. You knew this line had to run through Dr. Burney's property?

A. Yes.

Q. Dr. Burney is pretty careful?

A. I thought we were going to have to pay Dr. Burney a little on it, and I was surprised when I heard he was paying it.

Q. The line was paid for by somebody else other than the Street Railway Company?

A. Yes, sir.

Q. After that, the line was built by the company and was operated by the company over that line?

A. Which Company do you mean?

Q. The Street Railway Company operated the cars?

A. It built the line for Shandon Annex Company. The Street Railway Company subsequently operated the line.

Q. The Street Railway Company got returns, of course, on that line?

A. Got some. What they were, it got.

Q. They used those poles to carry the wires, both the trol- [fol. 610] ley wires and electric light wires?

A. I can't say about that. I do not remember. I would say not, but that is guessing.

Q. You knew, I suppose, about the ordinance before the company operated that line out there across King Street and also knew about Dr. Burney's connection with it?

A. We knew about it before we decided whether we were going to accept the deed or not. I do not know exactly when we knew about that ordinance. Possibly we were operating the line before we knew anything about the ordinance. The relations between the Street Railway Company and the Town of Shandon were not very cordial, and we may or may not have known it.

Redirect examination.

By Mr. Lyles:

Q. Do you know anything about Dr. Burney's interest in this matter at the time of the execution of the contract between the two companies?

A. My clear recollection is that I did not, and I subsequently found it out by some manner in which the money came to me.

Q. Did you have any dealings with Dr. Burney yourself?

A. I had none with Dr. Burney.

C. F. Cooper, recalled.

Direct examination.

By Mr. Lyles:

Q. Mr. Cooper, you have already testified that you are City Clerk and Treasurer of the City of Columbia?

A. Yes.

Q. You have been such since when?

A. Since 1905.

Q. Have you the records showing the jitney licenses issued by the City of Columbia?

A. I have.

[fol. 611] Q. When did jitney licenses start—what year?

A. In 1922, I think.

Mr. Belser: We want to object to the line of testimony about jitneys. We think it is irrelevant. Whether they licensed jitneys or did not has no bearing.

The Court: Taken subject to the objection.

Q. Just explain briefly what is meant by jitney?

A. A jitney is a car that operates on all the streets and any streets, and picks up passengers for hire and takes them to their destination.

Q. I believe they have obtained the more dignified name of supplemental transfers?

A. Yes, I think that is right.

Q. Do you recall that 1922 was the year of the strike on the street railway?

A. I do not.

Q. Do you recall that jitneys started at the time of the strike?

A. I think they started shortly afterwards.

Q. How many jitneys were licensed in 1922?

A. I have jitneys and transfers all together. I couldn't say how many jitneys there were, but altogether there were two hundred and thirty-seven transfers and those that took stands.

Q. Transfers are those that took points on the streets and the Union Station and got passengers?

A. Yes.

Q. The rate on transfers was how much?

A. Single passenger fifty cents, two or more thirty-five cents.

Q. Two or more going to the same destination?

A. Yes.

Q. You say there were two hundred and thirty-seven in 1922?

A. Yes.

Q. Just from your knowledge and observation and experience, could you give us any idea how many were transfers and how many were jitneys?

[fol. 611½] A. I would say not over forty were transfers.

Q. That would leave one hundred and ninety-seven jitneys?

A. Yes.

Q. At that time, about one out of five were transfers and four out of five were jitneys?

A. Yes, sir.

Q. In 1923 there were how many?

A. A total of two hundred fifty-one.

Q. Would you say that the same ratios of transfers and jitneys followed that year?

A. I think the same ratio.

Q. Turn to the year 1924?

A. A total of two hundred ninety-eight.

Q. Hav-n't transfers fallen off in recent years?

A. No, I think the transfers are pretty regular. In 1924 we may have had more.

Q. Isn't it a fact today that it is pretty hard to find a transfer on the streets when you want to get one?

A. I don't think so. We have stands for them at different corners.

Q. Have you tried to get one recently?

A. No, I have not.

Q. How many in 1924?

A. Two hundred ninety-eight.

Q. 1925?

A. One hundred ninety-nine.

Q. 1926?

A. One hundred sixty-nine.

Q. 1927?

A. Two hundred and one.

Q. 1928?

[fol. 612] A. You did not ask me for 1928. I think we have one supplementary.

Q. Have you the original communication from Columbia Railway, Gas and Electric Company, addressed to the Mayor and Councilmen of the City of Columbia, dated the 30th of September, 1927?

A. Yes.

We offer in evidence this letter, dated September 30th, 1927, signed by Columbia Railway, Gas and Electric Company, F. D. Campbell, General Manager, addressed to the Honorable Mayor and Members of the City Council of the City of Columbia, Columbia, South Carolina, marked Exhibit A-4.

Mr. Belser: We object to that on various grounds. First, it is a self-serving declaration in part. Second, they have no right, in our view of the matter to surrender obligations. Certainly not by addressing a letter to the City of Columbia.

Q. Mr. Cooper, was the City of Columbia incorporated under the statute relating to the commission form of government?

A. An election was held on April 2nd, 1910. Since that date it has been chartered.

Q. Chartered under the statute under the commission form of government for cities of that size?

A. Yes.

Mr. Edmunds: This statute says they may adopt a certain form of government.

Mr. Lyles: The admission, as I understand it, is that in 1910, the City of Columbia adopted the commission form of government for cities of more than twenty thousand and less than fifty thousand, as prescribed in the statute, as appears in Article 9, sections 471, et seq., of the Code of 1922.

Q. There is one other thing I wanted to ask you—hav-n't you got a map of some sort that shows the original limits of the City of Columbia and extensions that have been made to the limits?

[fol. 613] A. At the different dates?

Q. Yes, sir.

A. It would take some time to show the different dates when they were annexed. The original city was just four square miles—two miles each way.

Q. Step here a minute and look at the map—this radius, the radius of one mile, as shown on this map, which is exhibit 4, J. W. W., that shows the original city limit?

A. Yes, that represents the original lay-out.

Q. You hav-n't a list of the dates, a map that you could bring over here and show the extensions and tell us what time the extensions were made?

A. I could do it, but I would have to take my book and get the dates off of it.

Q. What fare do the jitneys charge?

A. Ten cents.

The Court: Jitney really means a nickel?

Witness: Yes, sir.

Recess for dinner.

R. D. Jennison sworn.

Direct examination.

By Mr. Lyles:

Q. Mr. Jennison, what is your occupation or profession?

A. I am an engineer and executor of public utilities. I was prepared at the University of Michigan, engineering course, and have spent nearly twenty years in the public utility work, covering all branches of that work—operation, construction and management; covering street railways, gas properties and electric properties. I am now engaged with W. S. Barstow and Company as General Manager of that Company, in the active supervision of the operation of a group of public utilities which this company works.

[fol. 614] Q. What company do you mean?

A. W. S. Barstow and Company.

Q. In how many different states—in what different portions of the country have you had experience along the general lines of public utility management and operation?

A. I worked for two years in Montana on a gas company, three years in Central Illinois on a combined gas and

electric company, a portion of two years in Kentucky, in Hannibal, Mo., for two years, in West Virginia as Vice President and Manager of the West Virginia Traction and Electric Company, which operated electric street railways, gas and water departments. That carries me up to about 1916. Since that time I have been engaged more in the eastern states, Pennsylvania, New York, New Jersey, North and South Carolina and Florida, working on public utility properties in those states.

Q. When did you first visit Columbia, and explain the reason for that visit?

A. I first visited Columbia in July, 1924, at the time when Mr. W. S. Barstow was considering the acquisition of the Columbia Railway, Gas and Electric Company. Mr. Barstow was tendered a luncheon by the Chamber of Commerce, to which some of the other members of Mr. Barstow's organization was invited, together with Mr. Barstow.

Q. When did you first make any inspection or pay any attention to the property of the Columbia Railway, Gas and Electric Company?

A. After September, 1924.

Q. What was your connection with that property aft September, 1924?

A. My connection after that date was one of assistance in the supervising of operation and management of the properties in South Carolina.

[fol. 615] Q. That was September. 1924, that your connection started?

A. Yes.

Q. At that time and up to July, 1925, the Columbia Railway, Gas and Electric Company owned all the property here?

A. So I understand.

Q. Do you recall when the Broad River Power Company was incorporated?

A. I think it was the latter part of 1924.

Q. Can you tell us now as to the general conditions of the whole property here and the prospect that faced any developments and expansion of this property?

Mr. Belser: That is going very far afield. They bought the property and they paid for it. The question of expan-

sion and development in this community is far afield in this case. I object to it as being irrelevant.

The Court: The testimony will be taken subject to objection.

Witness: At the time you speak of the interest of Mr. Barstow and his organization had been obtained by the Columbia situation, partly because of the very acute and almost dangerous shortage in power supply of the community, and recognizing that as a field in which Mr. Barstow's organization could properly divert its efforts, that aspect of the situation was given very close attention. The gas situation required some work. The railway property was operating at a loss and required a great deal of attention—close observation. In fact the entire problem down here was one of a financing and operating character, which engaged our interests, because that is what we do. We are engineers for that purpose. The principal thing that faced us was the power shortage. That was the burden of the entire talk of the Chamber of Commerce without organization.

Q. State generally, without endeavoring to go into de-
[fol. 616] tails, what was the Canal suit and the differences with the City over the Canal situation—were they then acute?

A. Very accute. That whole problem was tied in with the power supply well.

Mr. Belser: I object to that testimony—not only as irrevelant, but hearsay.

The Court: Of course the witness must avoid hearsay testimony.

Q. Did you take part in the settlement of the Canal suit?

A. I did from the very start.

Q. Were you one of the representatives of the settling parties?

A. I was.

Q. Did you personally attend meetings and conferences with the commission with reference to the settlement?

A. Yes.

Mr. Lyles: I call attention to the statute which continued in force the Canal Commission and authorized and di-

rected them to receive offers of compromise of this Canal litigation and to report the same to the General Assembly with their recommendations.

Mr. Belser: I might as well make our position clear about the matter of the Canal Settlement. They have an allegation in their answer to the effect that the merger Act was part of the Canal Settlement. I want to object to any testimony along that line—first, because the Act creating the Canal Commission limited the power of the Canal Commission to the matter of settling the Canal controversy. Second, because the report of the Canal Commission, which is embodied in the report of the Senate, does not contain any reference whatsoever to the merger act or separation act, of of the discontinuance of the street railway business. Third, because the contract between the State of South Carolina and Broad River Power Company and Barstow is duly signed and embodied in the Acts of [fol. 617] South Carolina, Fourth, that the Legislature itself hasn't any right to waive the rights of the State and people of the obligations of the street railway company or any other companies to require these people to perform the street railway service.

Mr. Lyles: They have made a specific charge of fraud against us, that in the Canal Settlement we secreted the properties. I don't know how we can meet a charge of fraud or secrecy except by being allowed to prove the contrary.

The Court: At this time I don't know whether the testimony is relevant or competent or not. We will admit it subject to the objections.

Q. Did you take part, on behalf of the General Finance Corporation, in submitting a proposition to the Canal Commission, which was dated July 17th, 1924?

A. Yes.

Mr. Lyles: I would like to state at this point that these particular papers we have here have just been secured from Mr. Barnett, Secretary of the Canal Commission. He has loaned them to us for the purpose of putting them in evidence. These are papers that came from Mr. Barnett as the records of the Canal Commission. I want to prove by this man that this man was there and submitted them.

Mr. Edmunds: We note our objection to this method of proving those papers as being a part of the record of the Canal Commission, of which Mr. Barnett was Secretary and from whom they obtained the papers. When they go to prove it is a part of the records of the Canal Commission, they cannot prove it by this witness.

The Court: Suppose this witness prepared the paper and filed it himself?

Mr. Edmunds: It may not have been received for that purpose. The records of the Canal Commission itself [fol. 618] would show. The mere fact that he prepared a proposition would not have any bearing upon it, unless there was some action taken on it. The Secretary of the Canal Commission is the only witness who can prove it.

The Court: The matter of relevancy don't appear to me.

Mr. Belser: They must certainly be in the nature of a preliminary. The final contract is in the Governor's office right now, and these are merely preliminary.

Mr. Lyles: That contract that Mr. Belser speaks of, that was quoted in the Statute of 1925, and is contained in the statute, and it recites that that contract is a part of the consideration of the transaction. You will find that recited in the statute. We propose to prove, under the usual rule, the other part of the consideration when the contract itself indicates that there was other consideration that moved from the State to this Company.

Q. I will ask if you will look at this particular paper. Don't pay any attention to the pencil memorandum on it, because that is my memorandum. Look at this paper and tell us if you ever saw that paper before?

A. Yes.

Q. Please look at this paper and see if you ever saw that one?

A. Yes, I have seen them both.

Q. Tell us what they were and what they are?

Mr. Belser: I object to that, because they are instruments in writing and they will show themselves what they are.

Mr. Edmunds: He cannot construe them.

Mr. Lyles: I am asking him merely what they are.

Witness. It is an original duplicate of communication addressed to Mr. Thomas B. Butler, Chairman of Columbia Canal Commission, by Mr. Lucian H. Ting, of the General Finance Corporation.

[fol. 619] Q. Is the paper actually signed by Mr. Ting?
A. It is. Both of them are.

Letter dated July 17th, 1924, introduced for identification, marked A-5.
Letter dated July 17th, 1924, marked for identification A-6.

Q. I will ask you if this paper, which is marked A-5, by J. W. W., is that an original signature of Mr. Ting?
A. It is.
Q. Will you tell me what became of that paper—to whom it was delivered?
A. It was delivered to the Columbia Canal Commission, in session in Mr. Barnett's office, in Columbia.
Q. What date?
A. The middle of July—July 17th.
Q. Was it a communication from the Finance Company to the Canal Commission, and was it delivered as such, of your own knowledge?
A. It was.
Q. Did you attend the meeting at which the communication was delivered?
A. I did.
Q. I hand you paper marked A-6, and which apparently started out as the same paper as the other one, so far as the contents are concerned, and will ask you what the insertion or interlineations appearing in pen and ink, how they were put in there?
A. They were inserted by Mr. Ting in his own handwriting, as minor changes in certain parts of the communication. It is the same date as the other one.
Q. At the same meeting?
A. At the same meeting.
Q. Are those insertions identified by Mr. Ting?
A. They are, by the initials of Mr. Ting.

[fol. 619½] Letter dated July 17th, 1924, marked for identification, introduced in evidence and marked Exhibit A-5.

Letter dated July 17th, 1924, marked for identification, introduced in evidence and marked Exhibit A-6.

Q. Mr. Jennison, would you mind reading that one with the interlineations in it please?

A. (Witness reads letter.)

Q. What was the General Finance Corporation?

A. The General Finance Corporation is a New York Corporation, organized for the purpose of acquiring public utility properties?

Q. What were the insertions that were put in as modifications of your proposal?

A. The first one "the initial development" was changed by an insertion to read: 'The initial hydro-electric development". The next one, ending the sentence "within one year after the statutes referred to shall become laws", was altered "shall be completed within five years thereafter".

Q. Those insertions or changes were made in the proposition as submitted and at the meeting at which it was submitted?

A. That is true.

Q. Was Mr. Ting present at the meeting?

A. He was.

Q. Did he agree to the modifications of the proposition as originally submitted?

A. He made them and agreed to them.

Q. With your explanation, and purely for the purpose of not unnecessarily encumbering the record, I will withdraw this one, if there is no objection to it. If there is any objection to it, I will leave it in.

The Court: Are they exactly the same?

Witness: Yes, sir; exactly the same, except for those changes.

[fol. 620] Q. This proposition of Mr. Ting speaks of two statutes to be enacted, which were enclosed with, and made a part of, the proposition?

A. Yes, sir.

Typewritten statute marked for identification A-7.

Typewritten statute dated July 17th, 1924, marked for identification A-8.

Q. Will you refer to the exhibits marked as A-7 and A-8, respectively, and tell me if those are two of the very papers or documents themselves that were submitted to the Commission as a part of the proposition of July 17th, 1924?

A. They are. The first one refers to the item number one in Mr. Ting's letter—the statute, the form of which is hereto attached.

Q. That is now exhibit what?

A. A-7. Exhibit A-8 is what is described as submitted by Mr. Ting with respect to item number two. Item number two was that the State of South Carolina consent to, and cause to be performed many other things, and to cause to be enacted Enabling Statutes, which were submitted. Exhibit A-8 is the Enabling Statute.

Q. I notice the Exhibit A-7 has certain pencil interlineations, and possibly changes, will you tell me if those pencil interlineations and changes were a part of the document as submitted by you?

A. No, they were changes to the document after submission by us. They were alterations resulting from conferences at that time and had to do with various technical aspects of the free hours due the State.

Mr. Belser: Our objection goes to all that.

Statute offered for identification as A-7, introduced in evidence and marked Exhibit A-7.

[fol. 621] Statute dated July 17th, 1924, marked for identification a-8, introduced in evidence and marked Exhibit A-8.

Q. Following the submission of this proposition with these attachments, what, in a general way, did the Commission say about your proposition?

Mr. Belser: I object to that form of testimony on a matter of this sort.

The Court: It hardly appears to be competent to me, Mr. Lyles.

Mr. Lyles: The Canal Commission had no minutes. These informal conferences were held. I wanted to bring out from this witness what the Commission said about their

authority as to what they would do about this matter, and as to whether any further negotiations were had.

Mr. Belser: My reply to that is: In the first place the Canal Commission was created by statute and its powers were limited. What they said was a matter of no difference. In the second place, the Canal Commission made a written report to the House and Senate—all of which terminated in a contract between the State of South Carolina and these people for the settlement of the Canal controversy. All of this is improper.

Mr. Edmunds: The Commission was made up of various members. One member asking a question or saying something is not binding on the Commission at all. I submit that is going entirely out of the realm. He is asking what the commission in general said.

Q. What position did the Commission take with you as to whether they had authority to actually agree to any settlement of this matter, or on the other hand, as to whether they stated they had authority only to recommend to the Legislature?

Mr. Edmunds: Whether one Commissioner said it or whether they all passed unanimously on it will depend on the record of the Commission itself. He cannot state what [fol. 622] was in the mind of the commission as a commission.

The Court: It sounds rather harmless the way he put it the last time.

Mr. Lyles: It is not the case of an ordinary statute. We are not trying to go behind this statute. The State in this transaction was acting in the settlement of a business transaction in which it had no greater rights than a private corporation—it is a question of agency of the Commission.

The Court: If I had to rule on it definitely, I would overrule it, but you can go ahead and put it in.

Q. Was any agreement reached between you and the Commission at that hearing or at that conference, or did you have further conferences and negotiations with the Commission? I don't want you to state the substance of anything that occurred between you. Was anything reached on your side and the Canal Commission on the other side at that conference?

A. No, sir; there were further conferences.

Q. In these further conferences, were various drafts of these two proposed statutes, the one referring to the settlement contract and the other being the Enabling Statute, submitted by you to the Commission?

A. They were.

Bill, dated July 17th, 1924, marked for identification A-9.

Q. Referring to the paper that I hand you, marked Exhibit A-9, will you tell me if you know what that paper was?

A. My recollection is that it is the final draft of the Enabling Act, discussion in the proposal made by Mr. Ting to the Canal Commission.

Q. Is it a final draft of the statute that was submitted by your side to the Commission?

A. Yes.

The bill above mentioned, dated July 17th, 1924, and [fol. 623] marked for identification A-9, introduced in evidence and marked Exhibit A-9.

Without objection, Exhibit A-5 is withdrawn.

Q. Are you familiar with the terms of the contract as finally enacted by the General Assembly and signed by the Governor and by Mr. Barstow?

A. I was at that time. I probably do not remember all the details now.

Q. You know of your own knowledge that there was such a statute passed?

A. I do.

Mr. Lyles: I call your Honor's attention to the Statute, which is found at page 852 of the Acts of 1925, and to the fact that the Statute was approved on the 24th day of March, 1925. I also call Your Honor's attention, and ask that Your Honor to compare as evidence the statute approved on the 19th day of March, 1925, and found at page 842 of the Acts of 1925, which was the Enabling Statute.

Q. Do you know whether or not the Canal Commission recommended the passage of both of these statutes?

Mr. Belser: There is the original final report that they made.

The Court: That will be the best evidence.

Q. Did the Canal Commission agree to recommend both of these Statutes to the Legislature?

Mr. Belser: We object.
Witness: Yes.

Q. Do you know as a matter of fact when this contract that was contained in the second statute, and which was signed by the Governor and by Mr. Barstow—do you know whether Mr. Barstow signed that contract—when he signed it with reference to the passage of the Enabling statute? [fol. 624] A. After the passage of the enabling Act.

Mr. Page: The original report is the best evidence of the signature. It could be gotten if they had attempted to get it.
The Court: I think so too. The date of this agreement appears to be blank, and I think the witness can say it was executed after that.
Mr. Belser: If he knows of his own knowledge.
The Court: Of course.

Q. Do you know whether or not that contract would have been signed by the Company if the Enabling Statute had not then been passed?

The Court: I don't think that is competent.
Mr. Lyles: It is a question of consideration. You will notice the other contract specifies it is only a part of the consideration.
The Court. It seems to me the acts speak for themselves. However, as I said before, we will let it in for the present.
Mr. Edmunds: Does he know whether it would have been done by the Company? He says he was an Engineer of the Company. That is an assumption on his part. I submit it is entirely irrelevant on that ground. He has not so established himself in his connection with the Company that he was the sole one to speak for the Company in that matter. The proposals are signed by somebody else entirely.
The Court: I am inclined to agree with you. Go ahead and ask the question.

Q. Did you have charge of all the negotiations with the Commission up to their recommendation to the General Assembly?
A. Not sole charge.

Q. Who else took part with you?

A. Mr. Anderson, of New York.

Q. What is he?

[fol. 625] A. Attorney. Mr. Barstow, Mr. Ting and Mr. Elliott and Mr. McLain.

Q. Were you present at their conferences where the terms of the contract were discussed?

A. You mean all meetings in Columbia?

Q. Yes, sir.

A. I think I was.

Q. Were you the officer of your side that had more to do with the negotiations and took more of a part in the negotiations than any other officer connected with your company?

A. I was not an officer of the company at that time, but I can answer the question by saying that I did represent our side of the controversy more than any other one individual.

Q. Would the company have signed that contract if the enabling statute had not previously been passed?

A. I think it would not.

Mr. Belser: I might also add, among our objections, that the evidence shows that the Broad River Power Company had long before acquired the stock in Columbia Railway, Gas and Electric Company, and they were advertising them for sale.

The Court: I am inclined to agree with you that the acts will speak for themselves.

Q. Was the General Finance Corporation one of the Barstow Companies?

A. It was considered so. It was a subsidiary of that group.

Q. Coming back to the Street Railway System. In the fall of 1924, you say you took charge of that end, under the duties of your office. Now tell us what was the condition of the street railway property here in Columbia at that time, and what was done with reference to the operation and maintenance thereof up to the date of the deed from the Columbia Railway, Gas and Electric Company to Broad River Power Company, which was in 1925?

[fol. 626] Mr. Edmunds: Do I understand that Mr. Jennison remained here all that time?

Mr. Lyles: I don't know.

Mr. Edmunds: Unless he did, his testimony would be entirely hearsay.

The Court: He can testify what he knows.

Q. I don't want you to tell us anything except what you know so far as the physical condition of the property went. What you know as a result of your own observation.

A. At the time the operations of the Columbia Railway, Gas and Electric Company were placed under the supervision of myself and others engaged with me, the Railway Department of that Company had been operating for some years past at a substantial loss.

Mr. Edmunds: That is bound to be hearsay.

The Court: Yes, I think so.

Mr. Lyles: We can't prove the books by one man. I want him to make use of these financial statements that are kept by the company, because it is impossible for us to prove them and then prove this man's testimony. If I don't later prove these statements, that portion of this man's testimony will be void. The manager who runs a concern has to rely on the bookkeeper.

The Court: You have got to prove the books.

Mr. Edmunds: My objection was to the answer of the witness of a positive statement, and I think my objection was timely. If he asures us he will connection it up, all right.

Mr. Lyles: We expect to put up a man to prove it.

Mr. Edmunds: We make a motion to strike it out, if he doesn't connect it with competent testimony.

Witness: From a study of a statement prepared from the books, earnings of the railway department showed a [fol. 627] substantial loss for several years prior to the time the stock of Columbia Railway, Gas and Electric Company was purchased by General Finance Corporaton. At the time the supervision came partly under my direction and others, one of the duties of the management was to try to harmonize the interests of economy with those of good service, or at least an improvement in good service. Also, by my own personal observation of the track and

rolling stock it indicated that the road had been very seriously undermaintained for some time. This under-maintenance had shown itself in the condition of the track and the cars. In spite of the fact that it appeared at that time impossible to operate the Railway Department with any adequate excess revenue over expenses, the Company set out to do a fairly apprehensive job of bringing up the track and rolling stock to a better condition. All the cars were painted and repaired. Six carloads of ties were brought on to the property and placed in the track; a Thermit(?) Welding outfit, costing $3,500.00, was purchased for building up low joints, an automatic grinding machine, costing $1,500.00 was purchased to grind off high spots in the track. A great many new bolts and new track was put in.

Mr. Belser: Are you testifying from your own knowledge?

Witness: I am testifying of it from my being in charge of it—supervising it. I live in Reading, Pa., but I have spent considerable time on this property and other properties.

New trolley wires were put in. New motor housings were put on the cars, and a good many new seats put in and seats repaired. Some special work was renewed. Two trestles were re-inforced by steel girders. Two additional cars were purchased. These steps were taken immediately [fol. 628] after the purchase of the Columbia Railway, Gas and Electric Company and extended over a period of a few months.

Q. That purchase was consummated along about September, 1924?

A. The work started at that time, or shortly thereafter.

Q. You say this work was done in a very few months following that time?

A. Following that, yes, sir.

Q. Continue your history of the Street Railway Department up to July, 1925?

A. You mean with respect to the physical condition only, or financial condition?

Q. First with reference to the physical condition and then as to its financial condition? You had an accountant

who kept the books—the Company had? You didn't undertake to keep the books?

A. Certainly not.

Q. As to the finances you rely on the books?

A. Yes.

Q. In your decisions and the exercise of your judgment as General Manager of this property?

A. Yes.

Q. Were you head operating man in charge of this property?

A. I am general manager and was at that time of the management group, which supervised and was responsible for this property and for other properties.

Q. You are speaking from that standpoint?

A. Yes, sir.

Q. You made personal visits and personal inspections in Columbia?

A. I did.

Q. You acted on the information that you obtained from such personal visits and from the books as to the financial [fol. 629] condition of the Company?

Mr. Belser: What Company?

Witness: Columbia Railway, Gas and Electric Company, and the other departments of that company as well.

Q. From that statement, give us the history of the physical status of this railway property up to 1925? We want a history from you of the physical property.

A. The work that was done in maintenance upon the property showed up in the statements of expenses by increasing the maintenance expense per car mile and maintenance of equipment by approximately fifty per cent. The total costs per car mile for the year 1925 and the latter part of 1924 were increased due to that additional maintenance which was absolutely necessary in order to operate the railroad.

Q. The subsequent year which you have been asked about?

A. The subsequent year which you have been asking me about up to the middle of 1925, Columbia Railway, Gas and Electric Company had increased its expenditures since September, 1924 by a substantial amount. The transpor-

tation expenses were approximately the same and would have no bearing upon the physical part of the property anyway. The property during that period, however, was not maintained at the level it should have been, nor has it at any time since then, and from the information I obtained from the records of the Company it was apparent that prior to that time it had not been maintained properly or adequately.

Q. Have you made a personal inspection, and did you make personal inspections of this property from time to time?

A. I have made several.

Q. Are you in a position to give us the value of the street railway property—the street railway department, of the tracks, the trolley and the street cars as of July, 1925? [fol. 630] A. I am in position to give you an approximate reproduction cost of the property as of that time, and another measure of value, which would be different from reproduction cost. If you will tell me which kind of value you want me to reply to I will do so.

Q. Suppose you give us the reproduction cost of the Street Railway System as of July 1st, 1925?

Mr. Belser: We object to that as being irrelevant.

The Court: It will be taken subject to the objection.

Witness: Approximately one million three-quarters dollars.

Q. On what basis do you figure that, and give us the basis of your judgment that that represented the reproduction cost at that time?

A. That was the amount of money that would have been necessary to replace the rails, the cars and overhead in existence at that time with property new.

Q. That included what items of physical property in the street railway system?

A. All of it.

Q. What other basis of valuation is available for property of that kind, as of that date?

A. The value of the property as a profitable going concern might be a measure, but the history at that time and the earnings that were made available to us prior to that time made such a value little or nothing. I consequently

could not try to establish anything as a measure of going-concern value of this property, nor could I estimate a price which a purchase might pay as a trading proposition for the reason that the company had no earnings. I consequently attempted to determine what might be realized from the physical property of the railroad as a non-operating unit, [fol. 631] if it was liquidated as such.

Q. What was the value of the property on that basis?

A. About One Hundred Thousand Dollars.

Q. How did you reach that valuation, and what items did you consider as going into that?

A. I simply took what I estimated could be realized from the sale of the cars and the wire if taken up, and the copper and over and miscellaneous items.

Q. Have you the items making up that valuation?

A. Yes, sir.

Q. Suppose you give us that?

A. There were twenty-eight passenger cars and three work cars, and I estimate the proceeds of the sale of those twenty-eight cars was Fifty-one Thousand Six Hundred ($51,600.00) Dollars.

Q. Have you that in detail as to each car?

A. There were six Birney Cars, three semi-convertible, nineteen semi-convertible cars forty-four feet spread, two semi-convertible cars fifty-two feet long, and two work cars. On the rail and special work my calculations indicate about three thousand four hundred and eighty-one tons of rail, which I think would net Thirty-four thousand Eight Hundred ($34,800.00) Dollars, about ten dollars a ton. Eighty-two Thousand Five Hundred pounds of copper at ten cents a pound, Eight Thousand Two Hundred Fifty ($8,250.00) Dollars, making a total of Ninety-four Thousand Six Hundred Sixty ($94,660.00) Dollars. Then I added Five Thousand ($5,000.00) Dollars for miscellaneous undetailed smaller items, which I have not undertaken to segregate, totaling Ninety-nine Thousand Six Hundred and Sixty ($99,660.00) Dollars.

Q. That includes the physical property of the street railway department of the Columbia Railway, Gas and Electric [fol. 632] Company? That includes the physical property of that department as of July 1st, 1925?

A. As near as I can determine it, considered on the basis that I have described.

Q. You took into consideration only the rails and the copper trolley wires, is that the idea?

A. That is true—the hardware, cars and so forth, which would not be used if the railway stopped and were sold to a purchaser.

Q. Your reproduction cost was of these things of that same date?

A. It is the cost to reproduce a new and exactly similar railway system as of that date.

Q. You were familiar with the earnings of this street railway department as shown by the books of the Company?

A. Yes, sir.

Q. You were familiar with the traffic, the number of people who rode on this street railway, as shown by the books of the company?

A. Yes.

Q. You familiarized yourself with the records of the company showing these matters?

A. Yes.

Q. You have had an experience of how many years in the management or operation of street railways?

A. My experience in public utility fields is covered over a period of about twenty years, and during that twenty years I have had approximately thirteen years experience on five hundred miles of street railway.

Q. Are you familiar with the operation of street railway system by Columbia Railway, Gas and Electric Company after that company made the deed to Broad River Power Company?

[fol. 633] A. Yes.

Q. I wish you would give us the history in a general way of the operation of that property from the date of the deed, June 15th, down to the cessation of the operations on the 11th of March, 1927?

A. The Columbia Railway, Gas and Electric Company, subsequent to the date you mention, operated only a street railway department, and its operations were carried on in some respects as they had been prior to that time, but the continued losses from operation from September, 1924, on to the time of separation, and subsequent to the separation, made it imperative that an effort be made to reduce losses so that some of the service may be continued. Every effort

was made to keep the railway operating as long as possible. As I stated before, the six or eight months just prior to the separation included the purchase of some additional machines and items which gave the railway a little longer lease on life, which it might not have had. The efforts to keep things going were unrelaxing, and consideration was given not only by the management, by me and my associations in the supervisory matter, but also by the Railroad Commission. Various orders were made by the Railroad Commission, covering fare, zonings and schedules. If I can touch on the rates of fare——

Mr. Belser: We object to his going into that.

Mr. Lyles: We would like the witness to give a complete history of the operation of the Company.

Mr. Edmunds. It is purely hearsay.

Witness: It had been suggested to the Company that other rates of fare be tried than the ones that had been in effect. I was conferred with about this, and it was felt wise by the management to act on an order issued by the Railroad Commission as to a certain change in far-s and in zones.

[fol. 634] Q. What particular order do you refer to?

A. I refer to the communication by the Commission of December 3rd, with respect to schedules, zones and fares, and finally to order No. 322 of the Commission, directed to the Columbia Railway, Gas and Electric Company.

Q. Date?

A. December 11th, 1925.

Q. All right?

A. Just prior to that order the rate of fare had been seven cents cash for each zone with three tickets for twenty cents, and three cents charge for a transfer. That rate of fare had been in effect from January 1st, 1925 to December 15th, 1925. The rate in effect prior thereto had been seven cents with three tickets for twenty cents. The Commission's order, which directed that a five cent fare be established in each zone, came, following certain conferences and communications. Some of the information and statements in the order bore out the point of the management, as for example, the Commission states in the order "apparently many people residing in the territory above named desire street car service." This had to do with the

territory served and certain changes in zones. "At the same time, it is apparently realized that the service has been operating in the present and past at a loss. This has been developed before the Railroad Commission and members of the City Council—the accuracy of which are vouched for by proper officials of the Company. All of whom have been informed of the conditions——

Mr. Belser: It seems to me that we are encumbering the record. That order has been introduced in evidence.

Witness: The entire order was simply one of the many steps taken by the management of the Columbia Railway, Gas and Electric Company in connection with trying out a [fol. 635] combination of fares which might prolong the service.

Q. That order was in December, 1925?

A. Yes.

Q. Did you try out the plans and schemes proposed by the Commission in that order?

A. Entirely. The trial lasted until June 9th, 1926.

Q. What happened in 1926?

A. In June, 1926, by order of the Commission, Number 331, a ten cent cash fare was instituted with three tickets for twenty-five cents and free transfers. In spite of different rates and different zones, the operating losses of the railway continued. Efforts were made to decrease expenses, as traffic fell off, and to show that some progress was made in this in the year 1924, the operating ratio was one hundred and sixty-eight per cent (168%). I mean that for every dollar that the Columbia Railway, Gas and Electric Company took in it spent One and 68/100 ($1.68) Dollars to furnish the service. In 1925 the ratio was brought down to One Hundred Fifty-five per cent., and in 1926 to one hundred and forty-six per cent. Efforts were made to economize as revenue fell off. In one branch of the service a very pronounced saving was made in general expenses. From the records of the Columbia Railway, Gas and Electric Company the following general expenses were shown for the year 1920, and these expenses are before any charge for injuries and damages—that being a variable charge every year—one year it might be low and the subsequent year high, eliminated that. In 1920 the general

expenses were Thirty-nine Thousand Fifty ($39,050.00) Dollars, in 1921 Forty-two Thousand Five Hundred Twenty-nine ($42,529.00) Dollars, 1922 Thirty-nine Thousand Eight Hundred Fifteen ($39,815.00) Dollars, 1923 Twenty-seven Thousand Nine Hundred Ninety-six ($27,996.00) Dollars, in 1924 Twenty-eight Thousand Six Hun-
[fol. 636] dred twenty-nine ($28,629.00) Dollars—that was in September, 1924 that the Columbia Railway, Gas and Electric Company was purchased by the General Finance Company,—in 1925 they were Seventeen Thousand Six Hundred Eighty-one ($17,681.00) Dollars, and in 1926 Twelve Thousand Five Hundred Thirteen ($12,513.00) Dollars. The General expenses were more than cut in half in the two years during which the operation was supervised by the present owners. I did not have the first two months of 1927, because the railway only operated three months.

Q. Operations ceased, I believe, on March 11th, 1927?

A. That is correct.

Q. The value of the physical property of the street railway department of the Columbia Railway, Gas and Electric Company, as you gave us of June, 1925, that only included the physical property that you described?

A. That is right. It did not include any cash on hand or the account of materials and supplies, or any other of the items of property that are carried under those classifications in the books of the company.

Q. It included the street railway tracks, the overhead trolley wires, the cars, incidental machinery and miscellaneous smaller items?

A. That is true.

Q. Tell us why the street railway ceased operations in 1927?

A. It had no funds with which to continue.

Q. Speaking from your experience in this line and from your experience with this Company, give us your opinion as to whether it is possible to operate a street car system in this town and its surrounding territory? In other words, a system like the system that was here, or is here, so as to make the same pay?

A. In my opinion it is utterly impossible.

[fol. 637] Q. Can it be operated so as to break even?

A. It is utterly impossible, in my opinion.

Q. Do you recall the losses that this Columbia Railway, Gas and Electric Company was suffering from this railway property over a period of years as shown by the books?

A. I have examined those books myself, and have taken some figures from them—examined the reports of operation.

Q. Assuming that they be correct, can you tell us—give us the broad figures of the losses over the period of the latter years?

A. From 1920 on until the cessation of operations, the losses were Six Hundred Seventy-five Thousand One Hundred Ninety-nine $675,199.00) Dollars. That means that the railway failed to collect from its patrons by Six Hundred Seventy-five Thousand Dollars the amount which it cost the railway company to render the service to the people, without any regard for fixed charges, the capital or depreciation.

Q. What do your records show as to the increase or decrease—generally as to the increase or decrease of the number of people riding the street cars over the latter period of years?

A. The decrease has been very pronounced—not only on this property, but the other street railway property with which I am familiar.

Q. According to the records as you examined them, this company has lost money as far back as you have gone?

A. That is correct.

Mr. Belser: We object to losses on the ground it does not comprise a defense.

Q. Based on the history as you have given it, do you see any possibility for any company in the world to operate a street railway company so as to break even?

Mr. Edmunds: I don't think he ought to lead his witness.

[fol. 638] Q. Give us your judgment as to the possibility of successfully operating street car service in this community?

A. I think it is entirely impossible to accomplish a profitable operation of a railway system in Columbia.

Q. I forgot to ask you—have you any official connection with Columbia Railway Gas and Electric Company?

A. Yes; I was Vice President.

Q. Have you any connection with Broad River Power Company?

A. I am Vice President of that also.

Q. Have you made an investigation and estimate of the cost of rehabilitating this street car system in its present condition?

A. I have.

Q. Give us your view of that?

A. I will have to state a few fundamental factors in making up the conclusions. In the first place, my studies of the railway situation both since 1924 and from the data I was able to find in the company's files for the period prior to 1924, indicate very clearly that the railroad has been living on its own flesh, from the standpoint of physical upkeep. I mean by that that the losses have been so large that the amount of maintenance which could be done and which was done has been totally inadequate. Secondly, the present condition of the railroad is something like an automobile that has been run for a great many years without many repairs on it. You might take it out of the barn and run it a little, but you couldn't run it long. That railroad has reached that condition. Motor replacements must immediately be made to some extent and some made to a very much larger extent if the railroad was to be put back into operation. There are certain fundamental factors known to railroad men and ascertained by observation and experience which make this condition very noticeable.

[fol. 639] In determining the cost of rehabilitating the system, I have tried to divide it into two parts. First of all, could the Columbia Railway, Gas and Electric Company resume any street car service quickly, and if so, to what extent? And following that—how much would it cost to permit it? Secondly, how much would it cost in rehabilitation to continue the service? Taking the answer to the last assumption first, in my opinion it would cost between Five Hundred and Fifty Thousand to Six Hundred Thousand Dollars to rehabilitate the railroad so that reasonable service could be given. This would not have to be spent in the first few months. It could not be spent in that time any-

way, but it would have to be spent over a period of a very short time—perhaps two or three years. That amount of money at a minimum, I believe, would have to be expended for replacements and repairs, together with some new equipment. After that money has been spent, there would have to be continued a very much larger proportion or rather a very much larger per cent. for maintenance of track, right of way and equipment than has been provided for in the past, or else the same cycle would have to be gone over again. If the railroad had to start operations tomorrow, it would probably be at least a month before it could physically start. It might be two—I don't know. It would probably cost One Hundred and Twenty-five Thousand ($125,000.00) Dollars to permit it to operate a few cars. The balance of the Five Hundred and Fifty or Six Hundred Thousand Dollars would have to be spent very shortly thereafter. This does not make a new railroad out of it. It simply takes care of the deferred maintenance which has not been taken care of.

Q. I want to ask you what developments have been made by the Broad River Power Company with reference to the electric properties and power properties in this section, [fol. 640] following your proposition to the Canal Commission?

Mr. Belser: We think that is irrelevant.

The Court: Its revancy may not appear.

Mr. Lyles: The proposition itself required certain developments. I think it would be competent to show we lived up in good faith to our part.

The Court: All right.

Q. What was the situation with reference to power on July 17th, 1924, and what has been done since that time with reference to the power situation in this section?

A. There was a serious shortage of power at the time of entry of Mr. Barstow and his associates in this company, and also at the time of negotiations with the Canal Commission. The offers of the settlement with the Canal Commission included an agreement on the part of the General Finance Corporation for the local companies to carry out certain conditions with reference to power plant capacity and transmission line availability. Those terms and con-

ditions were agreed to and appeared to be necessary in order to take care of the public, the electric consuming public. Since the acquisition of the Columbia Railway Gas and Electric Company and the formation of the Broad River Power Company, about Ten million dollars have been spent on the Broad River Power Company alone. One of the first things that had to be done was the building of a steam power station at some point on the system, because the available water power was inadequate. The first step by the management was to rush the installation of 12,500 kilowat turbines, and then a new power plant at Parr Shoals. That was completed faster than any power plant that I know of. It was built in eleven months. Shortly after that a thirty thousand kilowat turbine was added to that, a ten thousand kilowat frequency change has been installed, and another will be built around the City of Columbia for stiffening up service. Some of the hydro [fol. 641] electric units have been entirely re-built. Lines have been extended to Batesburg, Salley, North, and other places. The territory surrounding Columbia has been cared for by Broad River Power Company. Service had not been offered to these communities previously. Three new substations have been put in on the line, and very many minor improvements and additions to the plant and lines of the Broad River Power Company. All of these totals about ten million dollars spent from September 1924 to the first of this year.

Q. Those were developments that have been made by Broad River Power Company?

A. That is true.

Q. How about the Saluda Dam?

Mr. Belser: That is going too far afield. It is simply encumbering this record to go into the Lexington Power Company.

The Court: I do not see its relevancy.

Mr. Lyles: I call Your Honor's attention to a provision in the proposition "when the statute submitted herewith, or substituted therefor shall become laws, to cause to be developed certain water powers".

Q. Is there any connection between General Gas and Electric Corporation and Electric and Water Power Company?

A. The General Gas Company owns the Stock of Electric Water Power Company.

Q. What is the connection between the General Gas Company and General Finance Corporation?

A. It owns the stock of that corporation.

Q. It is an affiliated corporation?

A. Yes.

Q. Are they making any development over there?

A. They are.

[fol. 642] Q. Very large?

A. It has developed a hydro electric project of considerably of one hundred thousand kilowats with an artificial lake created.

Q. What is the approximate general cost of the development?

A. In the neighborhood of Twenty Million Dollars.

Q. Isn't it said to be the largest artificial lake in the world?

A. What is what I am told.

Cross-examination.

By Mr. Belser:

Q. You don't mean to imply to this Court that your company bought this property for the benefit of this community primarily?

A. I never implied such a statement.

Q. You don't mean to imply that?

A. I never made such a statement.

Q. You are really in business, and you bought the property because your company believed it was a good financial proposition?

Q. That is the situation to provide a profitable proposition.

Q. When you bought the Columbia Railway, Gas and Electric Company?

A. We did.

Q. Otherwise you would not have bought it?

A. That is true.

Q. You bought the stock, acquired the property of Columbia Railway, Gas and Electric Company in the summer or fall of 1924?

A. That is correct.

Q. When you put out and started advertising in the New York papers, when you wanted to sell bonds, you advertised that these two companies had been in successful operation over a long period of years?

A. I made no such advertisement.

Q. Here is a letter, which has been introduced in evidence, and marked Exhibit No. 28. My friend said that Mr. [fol. 643] Barstow, who signed the letters, did not know anything about it. He was cruising in southern waters when we tried to get the matter up last time, but that all of the other officials, of whom I assume you are one, knew about the statements in these publications. You are not connected with the statements sent to Halsey Stuart Company?

A. No, sir.

Q. It is a fact that you were one of the chief parties interested in the acquisition of this street railway gas and electric Company by the Broad River Power Company, is that correct? I believe you said that?

A. No. I think I said I was one of the principal negotiators in the Canal settlement.

Q. You had already purchased the stock in Columbia Railway, Gas and Electric Company before you took up the settlement of the Canal controversy?

A. No, that is not so.

Q. When did you acquire the stock of the Columbia Railway, Gas and Electric Company?

A. I think September, 1924. Negotiations with the Canal Commission were undertaken in July, 1924.

Q. Turn to the front page of the advertisement you have there, Exhibit No. 28. The front page was agreed by counsel as being an exact copy of the summary of letter of Mr. Barstow, he having summarized as follows: You will notice the left hand side about the middle: "There will be pledged substantially all of the outstanding preferred stock of the Columbia Railway, Gas and Electric Company and the preferred stock of Parr Shoals Company, both of which companies have been in successful operation over a long period of years". Do you see that?

Q. Yes.

[fol. 644] Q. You agree that is correct—that is a correct statement of facts?

A. I have no reason to doubt it. I would say that I have no reason to doubt that statement.

Q. You won't say you think it is true?

A. No, sir; I don't know.

Q. You have been examining the records of the street railway department and you are not prepared to say whether you think the company had been in successful operation as a whole?

A. I am not prepared to make any other statement than I did. I have examined in great detail the earnings of the railway department. I of course know there were other departments. I have no reason to doubt but those other two departments were operating successfully.

Q. Turn over on the next page. You will find there, under the head of "History and Organization". "Broad River Power Company, through subsidiaries is without competition, etc., which business had its inception in 1891". Did you have anything to do with the preparation of that? Do you know whether it is true?

A. I do not.

Q. Would you say whether it is true or false?

A. I don't know.

Q. Have you any reason to doubt whether that is true or not?

A. I know nothing about it.

Q. Let's turn over to the other side: "Broad River Power Company owns directly and controls the stock"—"Control of these stocks has been acquired through the issuance of one million Broad River Power Company bonds". Do you know whether that statement is true about the control of the stocks?

A. I don't know as to the amounts, but I think as to the [fol. 645] control of the stocks that is correct.

Q. Do you know how much Broad River Power Company paid for the stock?

A. I do not.

Q. Who had charge of that department of the purchase from the standpoint of your organization?

A. You mean the purchase of Columbia Railway, Gas and Electric Company stock?

Q. Yes?

A. That part of the negotiation, the consummation of it, was handled entirely through the financial department of New York.

Q. Did they make any report to you?

A. No, sir.

Q. Have you been examining the books to see what was paid for it?

A. No, I have had no occasion to do that.

Q. Did they make the purchase based upon your estimate what the property was worth?

A. No.

Q. Whose estimate was it made on, if you know?

A. I know of no estimate.

Q. You know of no estimate on which they based the purchase of Columbia Railway Gas and Electric Company?

A. Other than statements of earnings furnished by the company itself.

Q. You know when the stock was purchased that Columbia Railway, Gas and Electric Company had a street railway, light and gas departments?

A. Yes.

Q. You had all those interests in one company?

A. I knew there were those departments and they were in one company, with the exception of Parr Shoals Power Company.

[fol. 646] Q. You would not, of course, deny that this is a true statement, that the company paid out three million four hundred fifty thousand ($3,450,000.00) Dollars to purchase the stock in these two companies?

A. I wouldn't either deny or affirm it, because I don't know.

Q. Aren't you Vice President of the Company, both Columbia Railway, Gas and Electric Company and Broad River Power Company?

A. Yes.

Q. Assuming that counsel has admitted in evidence that this is a correct copy of letter from Mr. Barstow to these people, ar-n't you able to admit it is true?

A. I am able to admit it says it, but I have no exact knowledge of it.

Q. Don't you believe, if Mr. Barstow says it, it is true?

A. I do.

Q. Your Company paid Three Million Four Hundred Fifty Thousand ($3,450,000.00) Dollars to purchase the stock in Columbia Railway, Gas and Electric Company and Parr Shoals Power Company?

A. Which Company do you mean when you say "your Company"?

Q. Which ever company bought it? Do you know what Broad River Power Company paid for it?

A. No, I do not.

Q. Do you know what portion of the three million four hundred fifty thousand ($3,450,000.00) Dollars was paid for this property?

A. I have no knowledge about that.

Q. You paid something for it?

A. Doubtless.

Q. It was worth something more than its liabilities when it was bought—the company?

A. I assume so, but I don't know what those liabilities were.

[fol. 647] Q. Under the head or property and construction—you look at the bottom—"in addition, electric railway lines, consisting of thirty miles of track," etc. Do you know whether that is a true statement or not? Did they get any information from you about the track when they made that statement?

A. No.

Q. Hadn't you been the one investigating the value of the track?

A. I said I made no investigation prior to the purchase. I have made no statements or any reports to the issuors of this statement as to any of the matters contained in it.

Q. Did the Broad River Power Company have this thirty miles of track and the necessary equipment therefor?

Mr. Lepine: I think that is a misconstruction of the statement.

You see at the top it is headed Broad River Power Company?

A. Yes.

Q. They are preparing to sell Broad River Power Company bonds?

A. Yes.

Q. "Referring to your purchase of one million five hundred thousand ($1,500,000.00) Dollars of bonds of Broad River Power Company, I am pleased to submit the following information." You see that?

A. Yes.

Q. The property that is referred to there is the property in a letter of this kind which is supposed to secure that bond isn't it? You know that, don't you?

A. I don't know whether the property of the subsidiary company would be under the bond or not.

Q. You are experienced in the financial business, I believe you said that?

[fol. 648] A. No.

Q. The Barstow interests were financing these power companies?

A. No, W. S. Barstow's Company are financial managers of public utilities and do engineering, designing and construction.

Q. When you put out Broad River Power Company bonds and you say what the property these bonds are secured by, do you mean by that letter the property of Broad River Power Company or the property of some other company?

A. I should say it means what it says—electric property. It is not clear just where the ownership of each particular kind of property rests. It must either lie in Broad River Power Company or its subsidiary.

Q. It is given to the public as that which is secured by Broad River Power Company bonds?

A. No, there might be underlying bonds of the utility companies.

Q. When you wrote this thing and gave it to the public, isn't the object of stating the property to secure the bonds to let the public know what property is security for the bonds they are going to buy?

A. I don't think.

Q. What other purpose do they give a description of the property—that is a description of the property?

A. When you go to the security you find that described in different places in most circulars.

Q. It says under this head of property and construction it has got that railway line and the necessary equipment for the operation. You say that don't you?

A. Yes.

Q. Turn over to the next page to the last page. "The company and its subsidaries operate under favorable rights granted by the State of South Carolina, which, in the [fol. 649] opinion of counsel are without limit "of time." You say that?

A. Yes.

Q. What was the purpose of putting that statement in that publication or advertisement of this sort?

A. I think most purchasers of bonds are desirous of knowing of the franchises in which they are considering investing.

Q. I notice it says on the next page, the second page of this advertisement "there will be pledged substantially all of the common and preferred stock of Columbia Railway, Gas and Electric Company and Parr Shoals Power Company," etc.—you say that?

A. Yes.

Q. That says again that these two companies have been in successful operation of a long period of years?

A. Yes.

Q. You assume that was true to?

A. I have no reason to doubt it.

Q. Turn over on the next page and lets see about the earnings. It says "The net earnings for the year 1923 were Six Hundred Sixty-one Thousand Five Hundred and One and 46/100 ($661,501.46) Dollars"—you see that?

A. Yes.

Q. 1924 Seven Hundred Fifty-four Thousand Five Hundred Fifteen and 61/100 ($754,515.61) Dollars?

A. Yes.

Q. The capital stock that the Broad River Power Company had put into this company, both preferred and common, was three million four hundred fifty thousand ($3,450,000.00) Dollars, according to the statement on the other page?

A. It says control of these stocks has been obtained through the issuance of certain stocks. Whether that means all or part, I don't know.

[fol. 650] Q. In any event, if we assume that was the amount of capital stock that Broad River Power Company had put in to acquire these properties, then Six Hundred Sixty-one Thousand Five Hundred and One ($661,501.00)

Dollars is a pretty good return on three million four hundred fifty thousand ($3,450,000.00) dollars, isn't it?

A. It isn't a return on that, because you failed to deduct bond and other interest.

Q. It is a pretty good return on three million and a half, dollars?

A. It isn't return.

Q. I am asking you if it is?

A. If they earned Six Hundred Sixty-one Thousand dollars on three million four hundred and fifty thousand dollars, I would say that is a fair return. They did not earn that, though.

Q. 1924 Seven Hundred Seventy-one Thousand Five Hundred Fifteen Dollars is what this thing shows the net earnings were. That is what it shows?

A. Yes.

Q. That is of course over twenty-five per cent on three million and a half dollars?

A. They didn't earn that.

Q. If you deduct three hundred thirty-one thousand dollars that leaves you about three hundred and thirty thousand dollars net after paying the bonded indebtedness for the year 1923?

A. According to this statement.

Q. That is nearly ten per cent on three million and a half Dollars?

A. The arithmetic yields that. Please don't have me to represent that is the cost of the stock, because I don't know that. It says for control of the stock. They may have put up a lots more money for the balance of the stock.

[fol. 651] Deduct Three Hundred and Forty Thousand Dollars from Seven Hundred and Fifty Thousand Dollars, and that leaves you about Four Hundred Nineteen Thousand dollars net for the year 1924?

A. That would be the difference.

Q. If Four Hundred Nineteen Thousand Dollars is net earnings after paying the bonded indebtedness on three million and a half dollars, it is about twelve to fifteen per cent, isn't it?

A. Without checking your arithmetic, it looks to be that amount. I would like to reserve my answer as to that being——

Q. So for the year- 1923 and 1924 the evidence your company had indicates it was a successful company?

A. It was not in existence in 1923.

Q. I note it says these subsidiary companies, you don't deny that, do you?

A. No. May I make a correction?

Q. Yes, sir.

A. The interest which we have deducted from Seven-Hundred Fifty-nine Thousand Dollars is interest during the periods described. The carrying cost of the financing contemplated in the circular is Four Hundred Twenty-one thousand dollars.

Q. The indebtedness as existed during the period in question was the three hundred some odd thousand dollars as shown there, isn't that correct?

A. That is right.

Q. You read us some figures of losses which you say this company's books indicated it had. I want you to look over there and tell me from your figures what losses you took into consideration for the years 1923 and 1924?

A. I did not estimate the losses. I took them from the books of the company. During the year 1923, the operating deficit of the railway department was One Hundred Two [fol. 652] Thousand Four Hundred Seventy-seven ($102,-477.00) Dollars.

Q. 1924.

A. One Hundred Thirty-eight Thousand Forty-seven ($138,047.00) Dollars.

Q. I want you to look at this issue of this magazine "The Financial and Commercial Chronicle of New York City" of January 3rd, 1925, marked Exhibit No. 3-e, and look at this page here, page 85, and read me out there what you see as the operating revenue and the operating expenses for the yars 1923 and 1924?

Mr. Lyles: This newspaper was offered in evidence and was tentatively objected to, and I think the examination of the witness on that point is incompetent and irrelevant.

The Court: I am inclined to think that paper is not in evidence, however, take it subject to objection. This is cross examination.

Mr. Lyles: It is just a paper published in New York, and I think the witness ought to be informed of that.

The Court: Yes, sir; he ought to be informed.

Witness: The operating revenue is Two Hundred Twenty-nine Thousand Six Hundred Seventy-six ($229,676.00) Dollars stated for the year 1923, and Two Hundred Fifteen Thousand, Nine Hundred Twenty-four ($215,924.00) Dollars stated for 1924. The operating expenses of the railway department are stated for 1923 as Two Hundred Seventy-three Thousand Four Hundred Fifty-seven ($273,457.00) Dollars and 1924 Two Hundred Sixty-six and Seventy ($266,070.00) Dollars.

Q. Can you deduct that and tell us what the operating deficit as shown for the year 1923 would be?

A. The taxes are not pro rated, and I don't know——

Q. Tell me what is on the book there?

A. The difference between the operating revenue and the operating expenses shows a figure of Forty-three Thou- [fol. 653] sand Seven Hundred Eighty-one ($43,781.00) Dollars for 1923.

Q. Now for 1924?

A. Fifty-thousand One Hundred Forty-six ($50,146.00) Dollars.

Q. So that this publication, the figures in it show for the year 1923 a net deficit of Forty-three Thousand Seven Hundred eighty-one ($43,781.00) Dollars as against the figures which you used for the year 1923 of One Hundred Two Thousand Four Hundred Seventy-seven ($102,477.00) Dollars?

A. They do not compare because one is consolidated earnings and taxes are not allocated between departments, and it is impossible to compare the two unless you break it down to show the effect of the consolidation. If you did that the two would exactly correspond.

Q. You don't mean the taxes would be some Fifty-nine Thousand Dollars?

A. No. The fact the taxes are lumped for the three departments would effect this statement, whereas in my statement they are allocated. The other reason is in a consolidated statement there is eliminated from the expenses of the railway department the intercompany charges. For example, if there are Thirty or Forty Thousand Dollars, or whatever the price of power is, that is

taken out of the electric department—it is not reported in here at all, and it is also eliminated from the railroad department.

Q. The difference for the year 1924—in other words, the paper you have shows the net deficit for the year 1924 appears to be Fifty Thousand One Hundred Forty-eight ($50,148.00) Dollars?

A. Yes.

Q. The figures you used show One Hundred Thirty-eight Thousand Forty-seven ($138,047.00) Dollars?

A. Yes.

[fol. 654] Q. There is a difference between those figures of Eighty-eight Thousand some odd dollars?

A. Yes.

Q. Your explanation is that the difference is accounted for by the inter-company charges not appearing?

A. Yes, and taxes. Any necessary inter-company charges. The Electric department sells electricity to the gas and railway departments, we will assume. They do not treat those two departments in their revenue as they would treat them if they were outside customers, although they might charge them the same rates. They do not show those earnings because it is inter-company charges. We try to show the security holders the amount of electricity or amount of gas we sell to the outside public and not that we sell to the gas or railway department. Consequently we can take it ou*f o*t the gross and out of the railway department and gas department.

Q. That shows the operating revenue and the operating expenses of the Columbia Railway, Gas and Electric Company for that department?

A. No, sir.

Q. It says that?

A. It shows that on a consolidated basis.

Q. Consolidated basis of the company taking into consideration its subdepartments?

A. On the basis of those eliminations.

Q. When you go to deal with the public from the standpoint of selling bonds, you treat it as one company. You make no charges from one company to the other?

A. No, we don't do anything like that. We always make charges from one department to the other when they are proper.

Q. Do you think—is it your information from your reference to the books that Eighty-eight thousand dollars was [fol. 655] a correct statement for the power that was furnished to the railway department that year?

A. I did not make such a statement. I admitted that that difference was because of the difference in the form of the statements and part of that difference was power, but not all of it.

Q. Why shouldn't the taxes be allocated and charged in this statement against the railroad company as if it were charged against the holding company?

A. I think they should be. People don't like to read so many figures.

Q. Look at the figures under the head of railway department?

A. We did not make out this statement.

Q. The net result is that the company made for the year 1924—when you say your records show that the railroad department lost One Hundred Thirty-eight Thousand ($138,000.00) Dollars, it shows the net earnings to be Seven Hundred Fifty-nine Thousand Dollars?

A. No, sir.

Mr. Le Pine: I make objection to the testimony and of the use of the paper in evidence. He has to take the condition on which it was conceded. We conceded those figures were correct as covering a different year, that is, the year ending June 30th, as against the year ending December 30th. I insist that counsel be required in cross-examination of this witness to use it in connection with the concession made.

Mr. Belser: I conceive the right to cross examine this witness in my own way, according to the evidence in the record.

Mr. Lyles: We object to the use of that in the cross examination of this witness.

The Court: I think you had better bear in mind that condition.

[fol. 656] Mr. Belser: Her- is his paper introduced in evidence?

A. It shows that the cross income is Seven Hundred Fifty-nine Thousand Dollars.

Q. Look at the figure you have there and read me the letter which your counsel has admitted is a correct copy of Mr. Barstow's letter showing the net earnings?

A. They say the net earnings of the company was Seven Hundred Fifty-nine Thousand Dollars. That is what this statement shows, but not in this one.

Q. It is the same figure?

A. It is practically the same figure. In this statement it is clear that interest and depreciation charges have not been provided for.

Q. It says net earnings?

A. In this letter, but a different thing in this.

Q. The gross amount is the same—Seven Hundred and Fifty-nine Thousand Dollars?

A. I cannot compare them, because they do not say the same thing. There is gross income of Seven Hundred Fifty-nine Thousand Five Hundred Sixty ($759,516.00) Dollars, and there is a statement in this called net earnings Seven Hundred Fifty-nine Thousand Five Hundred Fifteen ($759,515.00) Dollars.

Q. In the exhibit which you have in your hands, the gross income there stated for the period there shown, on page 85, is Seven Hundred Fifty-nine Thousand Five Hundred Fifteen ($759,515.00) Dollars, for the year 1924?

A. Yes, for the year ending June 30th, 1924.

Q. For the year ending June 30th, 1924, Exhibit 28, the net earnings are shown as Seven Hundred Fifty-nine Thousand Five Hundred Fifteen and 61/100 ($759,515.61) Dollars. Is that the same figure you have?

[fol. 657] A. Yes, the figures are the same, but called different things.

Q. Your explanation of that difference in the amount of the losses is that the Eighty-eight Thousand Dollars is inter or intra-company charges?

A. We call them eliminations, and the further difference in the dates of the two statements and the taxes not being allocated.

Q. I want to ask you about this conference with the Canal Commission. I understood you to tell Mr. Lyles that

the Canal Commission had written two letters agreeing to recommend the passage of these two statutes?

A. That is my understanding of it, as finally agreed upon.

Q. Mr. Barnett tells me that the Canal Commission universally refused to have anything to do with the merger act, and I understand from Mr. McLain there was a letter written by the Canal Commission?

Mr. McLain: I want to ask you how you understood that from me.

Mr. Belser: You told me you had a letter in which they told you that.

Mr. McLain: I said I had a letter by which the merger of the Canal Commission, or rather two letters, both letters being identical, in which they agreed to recommend the passage of the enabling statute or merger act and the canal settlement act.

Q. Have you got that letter in your file?

A. No.

Q. Where is it?

A. I don't know.

Q. Have you got the letter, Mr. McLain?

Mr. McLain: We have got it somewhere.

Q. Have you ever seen the Canal Commission's Report, made to the Legislature, Mr. Jennison?

A. I probably have, but I don't know as I remember what is in it.

[fol. 658] Q. Would you look at this copy of it and see if that appears to be a correct copy of the report of the Canal Commission?

A. I don't know. I would certainly assume that it was.

Q. Do you see anything in that report that has any suggestion about any Enabling Act or Merger Act, or Separation Act?

The Court: Wouldn't the report speak for itself?

Mr. Belser: Yes, sir.

Q. Did they ever make any official statement to you in writing or otherwise that they would recommend the passage of this Merger Act?

A. Never to me personally.

Q. Your statement that your understanding was that they had agreed to do so is kind of a general conclusion that they had agreed upon it?

A. It is the result of several months negotiations, changing the terms of the Enabling Act and Canal Settlement Act, and the agreement with myself and Mr. Barstow that they would recommend both. They told us they could not do more than recommend the passage of the Enabling Act, but that they would do that.

Q. You know that the Canal Commission was created with special powers—you know that?

A. I don't know anything about the powers.

Q. Before you signed or had anything to do with signing the Canal Settlement controversy, did you make any effort to see whether the Canal Commission had recommended the passage of the Enabling Act?

A. Personally I did not.

Q. This letter Mr. McLain speaks of, have you ever seen that letter?

A. No.

Q. When you signed up this contract, you did not make [fol. 659] any inquiry to find out whether the Canal Commission had recommended or failed to recommend the passage of the Enabling Act?

A. When we signed up, the Enabling Act had been passed.

Q. Did your people or your representatives, or did you tell the members of the Legislature that the Canal Commission had recommended or would recommend the passage of this Merger Act?

A. I might have told my own employers that it was understood that they would recommend the passage of the Enabling Act. I think that is probably as far as I went.

Q. What about the members of the Legislature?

A. I don't know a single member of the Legislature, except Senator Butler of the Canal Commission.

Q. I notice the report of the Canal Commissioners says Mr. Barstow appeared before the Commission and stated they had purchased Columbia Railway, Gas and Electric Company, and so forth, and would take charge of said property by September 15th, and so forth. Is that statement correct that you appeared before the commission and stated

you had purchased Columbia Railway, Gas and Electric Company?

A. I don't know who the statement came from. We had not actually purchased until the deal was consummated. There was a contract.

Q. Between whom?

A. I think between General Finance Company and Columbia Railway, Gas and Electric Company.

Q. You had agreed to purchase the stock of Columbia Railway Gas and Electric Company when you came to the arrangements of the settlement of the Canal controversy?

A. There was an agreement looking to the purchase of the stock if certain things were perfected. There was no purchase made until the contract was consummated, and [fol. 660] that was in September.

Q. That is practically the same thing as having purchased it?

A. No, because you would have to look into the terms of the contract before you could make that statement.

Q. Do you know what the terms of the contract were?

A. I never saw it.

Q. You say that you made, some time or other, an estimate of the salvage value, more or less, of the Street Railway Department—when did you make that estimate?

A. I made several estimates. This is as of July, 1925.

Q. Why did you want to get the Merger Act passed?

A. There was no Merger Act.

Q. The Act we call the Merger Act?

A. You mean the Enabling Act or Separation Act?

Q. Why did you want to get that Act passed? You said it was a condition of the signing of the Canal Settlement proposition?

A. Yes, the matter of undertaking to build power plants, transmission lines and adequately take care of this section of South Carolina with power entailed the expenditure of a large amount of money, and, as I stated, we have spent ten million ($10,000,000.00) Dollars for that already. The financing of a company to raise the money to make these developments would have been seriously handicapped and perhaps made impossible if that company was operating a unit, a street railway system operating at a loss, or in fact if the street railway system were breaking even, it would still have been handicapped in financing the betterments.

Q. Your purpose was to separate the street railway department from the other departments of Columbia Railway, Gas and Electric Company—is that the purpose you had in mind?

A. That was one step to accomplish their purpose. That [fol. 661] had to be done first.

Q. You recognized that without such Act the Columbia Railway Gas and Electric Company was bound up with the street railway department?

A. No, I have not made any such admission. There was a street railway department.

Q. It was part of the franchises of the Columbia Railway, Gas and Electric Company?

A. It was operating a street railway system in Columbia.

Q. Your purpose in getting the merger act passed was to separate the railway department from the other departments of Columbia Railway, Gas and Electric Company?

A. Yes; so we could accomplish the other purpose.

Q. Take a look at this Act here—"Merger, certain corporations authorized." Did you see that?

A. Yes, sir.

Q. That was the Act which you gentlemen prepared?

A. I don't know. I will have to compare them.

Q. You notice in the caption of this thing it says to merge?

A. That is right.

Q. Your object was to separate the street railway department?

A. So that the Gas and Electric Company could be put into a company for financing its power developments. The separation, as we then saw it, was the first step in order that the sale of the other two properties could be made to the Broad River Power Company. Perhaps that is not the legal description of it, but that is so. The Gas and Electric Company was sold, leaving the street railway in possession of Columbia Railway Gas and Electric Company.

Q. Will you notice just as a matter of curiosity this bill you prepared—the word separate is not used at all?

A. I am not a lawyer, and I don't know the meaning of [fol. 662] all those legal terms.

Q. The Street Railway is not used there. Yet you say the purpose was to separate?

A. That was part of my answer. I said "so that the remaining departments could be sold to Broad River Power Company.

Q. You went to this dinner that Mr. Barstow attended when he came down in the summer of 1924?

A. Yes.

Q. Did you or Mr. Barstow ever tell the public or any members of the public generally that you were going to get an act to separate the street railway department from any other department?

A. I don't know that anybody ever made such a statement, except it was well known in our negotiations with the Canal Commission.

Q. Your main purpose in getting this merger act passed, or insisting upon it, was to separate the street railway department?

A. The purpose was that an Enabling Act be passed, permitting the sale of certain of the properties of the Columbia Railway, Gas and Electric Company, namely the Gas and Electric properties to the Broad River Power Company. Of course that accomplished a separation.

Q. Had your company then made up its mind to discontinue the operation of the street railway service in Columbia?

A. We had not decided on it.

Q. Was it your view that your company would be just as responsible to operate the street railway service after the passage of the merger act as before?

A. Which company do you mean?

Q. Either Company—Broad River Power Company or Columbia Railway, Gas and Electric Company?

A. Whatever obligations there were to operate a street railway, I never believed were affected by this Enabling [fol. 663] Act. If we had obligations, I assume they were carried right along with the Columbia Railway, Gas and Electric Company.

Q. Columbia Railway Gas and Electric Company conveyed all of its property to the Broad River Power Company—was it your intention to discontinue street car service? In the passage of the Merger Act, was the intention of yourself and the other officers of that Company that the Broad River Power Company should be released from the

obligation of operating the street railway department of the Columbia Railway Gas and Electric Company? If there was any obligation on the Columbia Railway Gas and Electric Company to furnish street railway service?

A. In the first place, I never knew of any obligations of Broad River Power Company to operate a street railway system. You are asking me did we conceive that the Broad River Power Company would be released from something it never had. I don't know how to answer it.

Q. Your publications say that it had been operating through subsidiaries. Did you consider Broad River Company was doing the operations?

A. Never did.

Q. When you wanted to separate the railway department from the other departments and turn over to the Broad River Power Company the electric and gas pwoperties, was it your intention thereby to let the Broad River Power Company keep all the valuable parts of the property of Columbia Railway, Gas and Electric Company and yet be relieved of the obligation to operate the street railway system?

A. I can answer it for the Columbia Company or the Broad River Power Company? The Broad River Power Company never had those obligations, so that part of the consideration did not appear. If the Columbia Railway Gas and Electric Company had them, it could not accept them.

[fol. 664] Q. Was it your purpose to put the Street Railway system of the Columbia Railway, Gas and Electric Company, without assets, to carry on——

A. The purpose was to put the Gas and Electric property to the other corporation, the Broad River Power Company, which could then finance the commitments undertaken with the State of South Carolina.

Q. Your statement in this letter said "The Broad River Power Company, through subsidiaries, was performing this street railway service. Was it your intention in getting the act passed to put Broad River Power Company where it would not, through subsidiaries, perform this service?

A. No.

Q. It was you intention that Broad River Power Company should perform?

A. The Broad River Power Company never operated the railway. Its subsidiary, the Columbia Railway Gas and Electric Company did. It is just as true after the sale as it was before.

Q. When you made the separation you say you made an estimate of the salvage value of the property of the Columbia Railway, Gas and Electric Company?

A. Yes.

Q. It was something like One Hundred Thousand ($100,000.00) Dollars?

A. Yes.

Q. How did you make an estimate of the salvage value?

A. I made an estimate very recently. It wasn't at that time. The statement is as of that time, but I actually made the estimate within the last few weeks.

Q. Did you make any estimate of the value of the Columbia Railway Gas and Electric Company's property when you made the separation or attempted separation?

A. I did not.

[fol. 665] Q. Were you present at the hearing before the Railroad Commission?

A. One of them. In fact, I think I have been there for two hearings, but not at all of them.

Q. You know there was a deficit of current assets after that so-called separation? You know that?

A. No, I did not understand that.

Q. What did Broad River Power Company pay Columbia Railway, Gas and Electric Company when they made the separation?

A. You are getting out of my field now. I cannot answer those questions.

Q. Aren't you one of the directors of both companies?

A. I am a director of neither. I am an officer of both, but a director of neither.

Q. You were not an officer of the other company in 1925?

A. No.

Q. When you made the investigation of this so-called separation or sale, or merger, what did you discover was paid Columbia Railway, Gas and Electric Company for their gas and electric light and power companies?

A. I never made any such investigation.

Q. I suppose you know that among other things, the sale, purporting to sell to Broad River Power Company these properties, among other things covered all the poles, including all of those used for street railways and so forth? You know that?

A. Yes.

Q. This sale of all of the property of Columbia Railway, Gas and Electric Company included the poles formerly used by Columbia Railway Gas and Electric Company?

A. Yes.

Q. Without the poles, of course the Columbia Railway Gas and Electric Company could not operate? Could they operate without building new poles?

[fol. 666] A. No; they could not, not without setting new ones.

Q. Did you make an estimate of what the poles were worth?

A. No.

Q. I suppose you know the poles were put there in connection with the street railway department?

A. Probably in connection with both departments.

Q. By one company which operated both departments?

A. I should say so.

Q. Do you happen to notice among the expenses listed for the Columbia Railway, Gas and Electric Company, in your company's books an item of Twenty-one Hundred Thirty-three and 40.100 ($2,133.40) Dollars for the expense of up-keep of poles, and do you recall that?

A. I don't remember that specific figure, but I know there are some of those expenses there.

Q. Though they had been deeded to Broad River Power Company, the Broad River Power Company has undertaken to repair all of the poles for the Columbia Railway Gas and Electric Company? Why did they charge Twenty-one Hundred and thirty-three and 40/100 ($2,133.40) Dollars for repairing poles and fixtures?

A. I think it is fair that they pay for the occupancy of the poles which they do not own—particularly when the maintaining company replaces the poles being occupied.

Q. Do you know what was the financial condition of Columbia Railroad Gas and Electric Company after this so-

called transfer from Columbia Railway Gas and Electric Company to Broad River Power Company?

A. No, I do not.

Q. Assuming that they are correct, you see from this, the testimony of Mr. Costello, that has been offered in evidence, you see he says the assets figured up around Seventy-five Thousand Dollars?

[fol. 667] A. Yes.

Q. The current liabilities one hundred and some odd thousand dollars?

A. Yes, sir.

Q. How much do they figure up—about One Hundred Twenty-five Thousand Dollars?

A. About One Hundred and Twenty Thousand ($120,000.00) Dollars.

Q. So that the current assets of the company at that time—I am not including the salvage value of the property—assume that was its actual value, the current assets and the current liabilities—there was a deficit of approximately fifty thousand ($50,000.00) Dollars between current assets and current liabilities?

A. Yes, but it had other assets, of course.

Q. If the Columbia Railway Gas and Electric Company was really under obligation to furnish and maintain street railway service on its lines, was it financially able, after this merger, to carry out that obligation after this so-called separation?

A. There was no difference before or after.

Q. If that was its condition afterwards and it was not in condition to carry it out, was it able to carry on street railway service?

A. Not without assistance.

Q. Assume it had an obligation to furnish railway service over its property—it was insolvent?

A. I don't think I would make that statement. I think the company was solvent at the time of the sale of the properties to Broad River Power Company.

Q. The whole of the property?

A. No, the remaining property.

Q. You think it was able then financially to carry out its [fol. 668] obligation to carry out the street railway service?

A. Maybe so, but that is not the measure of service.

Q. Was it able to carry out the obligation to furnish service?

A. I think I have answered that "not without assistance". I don't know just what the obligations were.

Q. What was the net value of the electric and gas and power properties which the Columbia Railway, Gas and Electric Company turned over to Broad River Power Company in this sale?

A. I don't know.

Q. Several millions of dollars?

A. I don't know.

Q. You know something about that?

A. I can't tell you, because I don't know what they were. I should say Columbia Railway Gas and Electric Company could have carried on the obligations to render a street railway company up to the exhaustion of its property. When that time came, I couldn't say. If it had to operate a street railway service it had some property to operate before and the same ability to operate before.

Q. Before the merger or the separation the old Columbia Railway, Gas and Electric Company, including the electric light and gas property, was financially several millions to the good?

A. I don't know that.

Q. You think that, don't you?

A. It showed an operating profit—I assume the figures you have shown me are correct.

Q. The company was making considerable money, and had assets way above its liabilities?

A. I think it had assets above liabilities.

Q. Of several millions of dollars?

[fol. 669] A. The extent I don't know, because I have not looked at the balance sheet.

May 29th, 1928.

Q. With reference to the estimate made by you about the cost of rehabilitating this system, how many times did you come to Columbia during the year 1927?

A. I don't remember.

Q. How many times did you come during the year 1925?

A. I can't recall that.

Q. How about the year 1928?

A. I think I have been down here three times in 1928.

Q. You were here at the other trial or hearing we had in this matter?

A. At one, I think.

Q. I believe you said it would take one hundred and twenty-five or one hundred and fifty thousand dollars to put the system in condition so that it could be operated at all?

A. Yes.

Q. Did you go out yourself and make an inspection of the track?

A. I did.

Q. How much did you go over?

A. All of it.

Q. How much of this estimate that you made would you ascribe to repairs on the track?

A. Sixty-five Thousand ($65,000.00) Dollars.

Q. Repairs on the track?

A. Yes.

Q. That going all over the system?

A. No.

Q. Over what part of the system?

[fol. 670] A. Simply the places necessary to permit the company to resume operations.

Q. The rest of your estimate was for other forms of rehabilitation?

A. You are referring solely to this initial cost?

Q. Yes, sir?

A. The balance was work on the cars and on the overhead. There is some special work in there also, which would be in addition to the track work.

Q. When did you make up that estimate?

A. Within the last week.

Q. Did you make it up before you inspected it, or after you got down here?

A. After an inspection.

Q. You came here on Sunday or Monday? Did you come on Saturday or Sunday?

A. I arrived Sunday.

Q. You made this estimate up after you got here?

A. I assembled some of the figures on this trip, and had made some of the figures on former trips.

Q. When has it been when you had actual experience in expending money for the repair of a railway system?

A. In my work I am doing it all the time.

Q. I mean being there on the work and supervising it, the engineer who sees the work go on from week to week?

A. I think I would have to draw a distinction between that of a foreman and a supervising executive. It has been sometime since I actually worked on a track.

Q. How much of your engineering work during the last ten years has been done in New York, and how much has been done in places where street cars have been operated [fol. 671] where you supervised as Engineer on the spot?

A. None of my work in that line has been done in New York. All of it has been done on the property where it is operated. My office is not in New York.

Q. You made up this estimate partially from your observation since you came on Sunday and partially from figures you made before?

A. Partially from observations made before.

Q. You spoke of expenditures you made after your company took over the property in 1925 and 1926. Will you look at those figures here that were offered in evidence. I will state to you that Mr. Costello stated that the expense for the maintenance of way and structure for that period was something like twenty-five thousand dollars, is that correct?

A. I don't recall. I could check that up, having the reports before me.

Q. You mentioned in your own testimony what you had spent during the year 1925 for repairs or improvements in this street railway system—how much did it amount to?

A. I didn't give the amount. I gave some of the character of work done, and the result in maintenance in cents per car mile.

Q. In fact it was about twenty-five Thousand Dollars?

A. I couldn't answer that without referring to the records.

Q. What was it you said you spent or put on to the track?

A. I recited various things which we did on both the track and roadway and on the cars.

Q. Did you see any of it done yourself?

A. Some of it.

Q. What was it you saw was done?

A. I saw the cars being painted.

[fol. 672] Q. You said you had some figures as to what you *did* have done?

A. I thought your question was "how much did I see done."

Q. No, what did you say had been done?

A. Cars were all painted and repaired. Six carloads of ties were placed on the roadbed.

Q. How much would six carloads of cars amount to in ties?

A. I can't recall just this minute.

Q. You don't know how many ties make a carload?

A. No.

Q. What is the cost of putting a tie in place? Are you testifying about that from your records or recollection?

A. I hav-n't testified about that at all yet.

Q. What does it cost to put a tie in place?

A. It depends a great deal on where the tie is put in place—whether on open track or under a track on pavement, or under a track that is new or under an old track.

Q. What is the average cost? How did you make an estimate of what it does cost?

A. I would have to have the conditions surrounding where it is to be put.

Q. How much did it cost?

A. I don't know. I hav-n't any records on that. It could be obtained from the office records, however.

Q. Did you think that was reasonably enough maintenance for the track at that time to put it in fair operating condition?

A. By no means.

Q. Then you think the track was not in even fair condition for operating?

A. That is my opinion. We improved it, but it was far from good operating condition.

[fol. 673] Q. I didn't ask you about "good." Was it moderately fair?

A. It was not that.

Q. Where was it put?

A. Some on Main Street, some on the Shandon Line. A great many low joints built up and ground down. Some

special work around Main Street was repaired. Some of the bridges on the College place Line—two trestles were reinforced.

Q. What two trestles are there on the College Place line? As a matter of fact there is only two trestles on that entire line?

A. No, I saw two. They are small ones.

Q. What two trestles are there on the College place line? There is one little branch between Newman's and the Town of Eau Claire?

A. I am talking about the line that goes out to Ridgewood and College Place. There were two very close together there. It is along going through the State Farms.

Q. You spoke about these efforts at economy—one thing you did was to make application to the Railroad Commission to get this Order No. 331, dated June 9th, 1926, passed, which curtailed the service?

A. I don't recall all the questions surrounding it, but I assume that is the order.

Q. Do you know from your connection with the company, or investigation of the records, whether or not the gross losses to the company or the claim losses of the company after that increased or decreased?

A. I would have to refer to the monthly statements to be able to answer that.

Q. You couldn't say that, after this change which the company got the Railroad Commission to tentatively au- [fol. 674] thorize, whether or not the expenses or net losses to the company were greater or less?

A. The losses have been less for the last two or three years. To divide it I would have to get the monthly reports.

Q. Look at the figures on page five of the report of testimony taken before the Railroad Commission March 18th, 1927, and see whether or not that appears to you to be correct, whether it is a correct statement of losses month by month during the year 1926, claimed by your company to have been sustained?

A. I think those are true.

Q. Do you observe from that the losses for the last six months, after this change was put into effect, was greater than they had been before?

A. Reading from page five of the testimony of the Railroad Commission, taken March 18th, they were greater than they were the first part of 1926.

Q. So that, after the service was discontinued, the monthly losses tended rather to increase than to decrease?

A. I think there were other things entireing into it besides curtailment of service.

Q. It is a fact that those losses increased after July, 1926?

A. Slightly.

Q. I believe you stated that after the so-called separation in June or July, 1925, that the condition of the street railway was such that it could not perform street railway service without assistance?

A. I did not make that statement.

Q. What was your statement?

A. My statement, as I recall it was, that the Street Railway Company could not continue to operate on the basis that it had in the past with the heavy losses, without assistance.

[fol. 675] Q. Did you or did you not realize then that the Street Railway business, or were you then of the opinion that the street railway business in Columbia was hopeless?

A. At that time and during the remaining part of the experience of the management in Columbia, we had hopes that it might be worked out somehow.

Q. Did you, at that time, want to discontinue the street railway business, or in the fall of the year 1925?

A. I am not sure about that date. Of course the management was constantly studying the situation, faced with the continuing losses. Now just what date the management decided that it could no longer continue, I don't remember.

Q. You can't say whether or not you had then reached the condition where the company wanted to discontinue the service?

A. It wasn't a question of wanting to—it was a question of being unable to continue. Just what time that first became apparent, I don't know. The cars didn't stop until March, 1927.

Q. You know, I suppose, about the efforts made by your company to assist the bus company to get instituted, or established in this community?

A. Which Company do you refer to?

Q. The Broad River Power Company and the Columbia Railway Gas and Electric Company? You can separate them if you want to?

A. To my knowledge neither company made any efforts to assist the busses to come into Columbia. My understanding is that they came, and after they came, the desire of the Columbia Railway, Gas and Electric Company and of the Broad River Power Company executives was to see that, if possible, an adequate system of transportation was provided for the citizens of Columbia before the street railway system stopped operating.

Q. Mr. Peterman, who was President of this Company, was here and testified that the officers of the Broad River [fol. 676] Power Company went to the White Motor Company and asked them to extend credit to the Carolina Bus Company to enable them to get their equipment. Will you deny that as being true?

A. I don't know anything about it, but I do recall this, that the organization doing the bus business had come first without any invitation on the part of any of our company or any of our interests.

Q. Mr. Peterman also testified that the Broad River Power Company at that time wanted to discontinue—do you differ with him?

Mr. Le Pine: I object to that manner of cross examination. If Mr. Belser wants to take the testimony in the case now before the Referee and ask this witness about what he said, it is all right. As to what somebody has testified on some other occasion, I object to his using it. My objection is that Mr. Belser wants to use the record in this case as to what someone said—Mr. Peterman stated, to the Railroad Commission.

The Court: I think the principle you have laid down is correct. I have one difficulty—the testimony before the railroad commission is in as objected testimony. As I see now, the testimony taken before the Railroad Commission, it is necessary that it come in under the law and practice we have.

Mr. Edmunds: We put on the stand, Mr. Walker, who was the stenographer. We put on the stand Mr. Tatum, and they testified as to what was stated by Mr. Peterman, an

executive of the Columbia Railway, Gas and Electric Company about this particular matter of seeking the White Company to extend credit and the employment of a man named Hawkins to manage this concern; that it was paid out of the funds of some Spartanburg Company, which is stated to be subsidiary. The question is whether this witness agrees or disagrees with that statement.

[fol. 677] Mr. Belser: There isn't any real dispute about the fact. I am certain that it is in the testimony taken here. "We wanted to discontinue." That is on page 25 of the testimony taken before the Railroad Commission. "When your company was making arrangements or asking the White Company to extend credit to Carolina Bus Company, state whether or not your company wanted to discontinue the railway system."

Mr. LePine: I am objecting to his reading in the record in this case if Mr. Peterman didn't say so and so.

The Court: Let's shorten it up all we can, Mr. Belser.

Q. If Mr. Peterman did say that the companies wanted to discontinue in the fall of 1925, at the time arrangements were being made for the Bus Company to come here, will you say that is correct or incorrect that the company did want to discontinue?

A. I can only speak for myself. I cannot speak for Mr. Peterman. The Columbia Railway Gas and Electric Company was apparently unable to continue operations of the street railway system in Columbia for any great length of time, due to the fact there was not enough money to pay operating expenses. Consequently that company and those interested in the management of Broad River Power Company felt that, before any cessation of operation, there should be an effort made on the part of some one to bring in another transportation medium.

Q. Didn't they decide——

Mr. Lyles: I think the witness should be allowed to finish his answer.

The Court: Yes.

Witness: I think I finished.

Q. You knew, of course, that the installation of a Bus Company in this community would take some of the patron-

age which would naturally go to the Columbia Railway Gas and Electric Company?

A. Of course.

[fol. 678] Q. If you wanted to continue from that time on you would not be interested in having a Bus Company come along and compete by yours?

A. I rather not have you say want to continue. It was necessity and not desire.

Q. If the Street Railway Company was short of current assets, as shown by the statement I have shown you at the time of the separation, what difference was there in the condition of it at that time from the condition that existed in March, 1927?

A. The Columbia Railway Gas and Electric Company was entirely solvent at the time of the separation. It had funds and it had property. It was a solvent concern. The inability of the Columbia Railway Gas and Electric Company to continue to operate at that time, incurring losses of One Hundred Thousand to One Hundred and Fifty Thousand Dollars a year, which was the assumption you asked me to make, made necessary my answer to you that it could not so operate without borrowing some money from that time on. From that time on it did operate and it did have to borrow some money, and, as a continuance of those losses drained its resources, it got to the point where it must cease because it had no funds.

Q. The Broad River Power Company supplied the money?

A. They loaned them some money.

Q. From when?

A. I can't tell you the first date, but I think it was very early in the operation of the companies.

Q. Within a month or so of the separation?

A. I think so.

Q. The company had to supply it?

A. It may have got it from outside sources, but it didn't try.

Q. Was it the intention of the company in 1925, shortly after separation, if it continued to lose money, should go [fol. 679] out of business or that Broad River Power Company should continue to supply it with funds?

A. There had been no determination made. The management of the Columbia Railway Gas and Electric Com-

pany and Broad River Power Company hoped that through some change in conditions the railway might be continued, and we lived in that hope to the end.

Q. If your company had hoped to make this street railway pay, what reason or excuse can you offer to this Court for assisting in bringing in a Bus Company to operate during the remaining life of the Street Railway?

A. In the first place there was no initial assistance given this company to my knowledge. When the company did come here, curtailment of service had been made, and by that time there was some grave doubt in the minds of the management as to the ability to longer continue the operation of the street railway system. With that in mind, it felt that the community should have something in lieu of transportation in case it had to cease.

Q. Do you know of your knowledge, one way or the other, whether Broad River Power Company's Light Company in Spartanburg, which is a subsidiary of Broad River Power Company, paid Mr. Hawkins Five Hundred ($500.00) Dollars a month?

A. I am informed that the Spartanburg Bus Company paid Mr. Hawkins Five Hundred ($500.00) Dollars a month for the operation of the Spartanburg Bus Company.

Q. While he lived in Columbia?

A. While he lived in Columbia, he spent sometime in Spartanburg.

Q. And managed the Carolina Bus Company?

A. As to that, I cannot say.

[fol. 680] Q. The Spartanburg Bus Company is a subsidiary of Carolina Transit Company?

A. I am not sure whether it was a subsidiary of that or General Gas and Electric Company.

Q. Don't you think the payment to Mr. Hawkins had some effect in facilitating the operations of Carolina Transit Company?

A. I have no idea about that, because I don't know Mr. Hawkins' business.

Q. Will you look at this statement and see if that looks like a correct statement of the financial condition of Broad River Power Company for 1927?

A. I can't say whether it is correct or not. It would have to be checked up by our auditors and accountants before that answer can be made.

Q. Have you ever seen a statement?

A. I have seen several statements of Broad River Power Co.

Q. Can you tell us whether you think it is correct?

A. I would have to check the items.

Q. Go ahead then and check it?

A. In the first place, the statement of earnings don't check with the reports of Broad River Power Company as of that date. I can't check the items on the balance sheet or with the reports of Broad River Power Company either.

Q. What will you say about it? Is it an official statement of Broad River Power Company or a copy of one?

A. I don't know what it is. It does not check with the statements of Broad River Power Company.

Q. What about the earnings, is that correct?

A. It does not check with the statement of the company.

Q. What is the net earnings as shown by our company? [fol. 681] A. There is no item of net earnings carried in the company's statement at all.

Q. What is the difference between gross revenue and gross expenses—on the sheet of paper which you gave me?

A. The difference is One Million Five Hundred Sixty-six Thousand Three Hundred Sixty-six ($1,566,366.00) Dollars.

Q. What about the figures you have on it—the difference between operating expenses and operating revenue?

A. One million two hundred sixty-two thousand nine hundred twenty-seven ($1,262,927.00) Dollars.

Q. About three hundred thousand dollars difference?

A. Yes. There is another item of so-called other income, which in our statement would make it one million four hundred eighty-six thousand three hundred sixty-six ($1,486,366.00) Dollars.

Paper presented to witness marked for identification A-10.

Q. How many years have you been living in Reading, Pa., spending the major portion of your time there?

A. Since 1919.

Q. Generally speaking, what really are your activities, what kind of work do you do in connection with these companies?

A. I assist in the supervising of the management and operation in practically all of its branches of subsidiary companies of General Gas and Electric Company.

Q. They must have fifty or more?

A. They have five named systems. They have a system in New York. They have a system in the northern part of New Jersey. They have a system in Pennsylvania around Reading and a smaller one to the north. They have one in Florida, and this in Columbia. That is the five major ones.

Q. The letter Mr. Barstow sent out said it was a part of a super power system, is that correct?

[fol. 682] A. At that time General Electric and Gas Company owned Street Railway Gas and Electric Company in Spartanburg, and also owned stock of North Carolina Public Service Company, operating in Greensboro, Winston Salem, High Point and Salisbury, North Carolina.

Q. Your management specializes in power—did you say that?.

A. No, I didn't say that. It covers all branches of operation and management.

Q. Gas, Electric Light and Power?

A Yes.

Q. You have been making an effort to get rid of the street railway lines during the last few years? Has your companies been making an effort to get rid of the street railway lines during the last few years?

A. Not that I know of.

Q. Are they making an effort to keep them operating?

A. They are operating, such as they have.

Q. Have they got many?

A. They have about two hundred miles of street railway system in Pennsylvania at the present time.

Q. Does your concern control the railway system in Raleigh, North Carolina?

A. No.

Q. Did you ever control it?

A. Never.

Q. Does your company own and control the railway system at High Point, North Carolina?

A. A subsidiary of the General Gas and Electric Company did at one time, but that is no longer a subsidiary. It has been disposed of.

Q. Is the street car line in High Point running?

A. I don't know. I can't answer that.

Q. You know this publication called "Public Service", published by Mr. Boney, of Raleigh, . C.

[fol. 683] *Q.* No, sir; I don't know it.

Q. Do you know whether or not more people used the street railway cars in 1926 than 1925?

A. In what location?

Q. Throughout the United States?

A. I don't know that to be a fact.

Q. Do you know anything about the American Electric Railway Association?

A. Yes.

Q. Is it reliable?

A. I think so.

Q. I hand you this book, called "Public Servise"—You see that there?

A. Yes.

Q. Look over on the inside page, and you will see I have something marked, where it says two hundred and thirty million more passengers used street railways in 1926 than in 1925. Would you say that is correct or incorrect?

A. I would make no statement about it, because I don't know.

Q. I read this to you, and will ask you whether or not this appears to be in your judgment sound: "The American Electric Railway Association report that electric railways of this country carried two hundred and thirty million more passengers last year than in 1925. This is conclusive evidence that the railway is not only holding its own, but is forging ahead. Many find it more convenient to use the street car than to worm their way through congested streets", etc. Does that seem to be sound?

A. Some of it is sound and some of it is not.

Q. Which is sound and which is not sound?

A. I think that in certain locations and under certain conditions street railway service may be rendered with a reasonable return to the investors. I think there are many [fol. 684] other conditions where that is quite impossible.

I think there are places where for some people street railway transportation is convenient.

Q. Are you familiar with the conditions in this immediate community, North Carolina, South Carolina, Georgia and Virginia?

A. What conditions?

Q. The conditions of street railway service in those states?

A. No, I am not.

Q. I believe your company has a super power company in these states?

A. No, they have not.

Q. Don't you know, as a matter of fact that Columbia is the only town of its size in the States of North Carolina, South Carolina, Georgia and Virginia, Alabama, Tennessee or Florida that hasn't street railway service?

A. I can't answer that, I don't know.

Q. Do you know of any town in those states of the size of Columbia that hasn't street railway service?

A. I don't know of any.

Q. Do you know anything of Lucius S. Storrs?

A. I have heard of him. I don't know him.

Q. Do you think he is fairly reliable?

A. I don't know anything about him.

Q. If he says that conditions in the local transportation field throughout the United States improved last year and "the industry, representing about one hundred seventy-five thousand railway cars enters upon 1928 with promise of an upward swing in its affairs". If he says that in this issue of Public Service of December 15th, 1927, would you say that is correct or incorrect, as a general proposition?

A. I cannot answer that, because I don't know the things Mr. Storrs had in his mind when he made that utterance. [fol. 685] Q. I took it for granted—I believed you said throughout the country the street railway business was on the decline?

A. I think I said I know of no company that was operating at its old rate of earnings. In my experience there has been a decline for some years past in the earnings of street railways generally. I do know this, that in 1926, due to business conditions and a greater degree of pros-

perity, there has been a spurt in car rides. In 1927 they got back to the same old place and showed a loss over 1925 and 1926.

Q. The street railway service, assuming it is reasonably patronized, is it inherently cheaper or expensive than Bus service to the operators?

A. I don't know. There is some places where one is cheaper and some places where the reverse is true.

Q. What about the operations in Spartanburg? Is the bus service there cheaper or more expensive? Do you know about that?

A. I don't know about that. The railway only operated two or three cars during my management.

Q. If Mr. Peterman testified that the bus service is more expensive than street railway service, would you disagree with him about that?

A. I would neither agree or disagree. Bus service in some places is more expensive than street cars, and in other places it is not.

Q. Take Columbia, for example, where we have a mighty lot of water power in the community and we have a street railway track laid out here and it has been used for about forty years. If they got the same patronage the Bus Companies get, would it be cheaper or more expensive for the operators of the Bus Company or Street Railway Company to carry passengers.

A. You say a Railway that is operated for forty years. During some of those forty years the Railway Company [fol. 686] has operated in a way that has made it impossible to keep up equipment and its track, and if it were to operate as the busses, a very large amount of money would have to be spent. That would have to be taken into account to tell what it would cost to render street car service. I can't answer your question definitely because those collateral conditions must be recognized.

Redirect examination.

By Mr. Lyles:

Q. Mr. Jennison, you stated something about two trestles being on the line that I think you called the College place line. Where did you locate those two trestles?

A. In the farm of the State. I miscalled the name of the line. It is Colonial. They are located on the Colonial Heights Line, where it goes through the farm of the State, commonly called the Asylum property.

Q. You said you thought the Broad Rover Power Company owned all of the stock of the Columbial Railway Gas and Electric Company. Did you make such a statement, or intend to make such a statement?

A. I said all the common stock. That is what I meant, anyway.

Q. Mr. Jennison, I call your attention to page 70 of the transcript of testimony taken before the Railroad Commission, at the hearing of March 23rd, and March 30th, 1927, which I am advised by Mr. Belser were the pages he showed you with reference to the cross examination of the current assets and current liabilities of Columbia Railway, Gas and Electric Company, I think at the time, or about the time of the sale. What is the item among the liabilities of "Paving Assessments" on that statement?

A. Thirty-three Thousand Two Hundred Fifty-five and 97/100 ($33,255.97) Dollars.

Q. Do you know whether that item is correct or not?

[fol. 687] A. I do not. I have heard some question about it.

Q. If there is a mistake in the statement of Thirty Thousand Dollars, that would decrease the liabilities thirty thousand Dollars?

A. Yes.

Q. As to your personal experience in the supervision of street railway operations, you stated you make your headquarters in Reading, Pa.?

A. Yes.

Q. How much of your time do you spend at Reading?

A. About a third of it.

Q. What is the extent of the street railway operations at Reading that come under your personal supervision—how many miles of track, and through what communities do they run?

A. There are about two hundred miles of track, and as I recall it, eleven companies operate in and around there—eleven in Pennsylvania—Reading, Pa., Norristown, Pa.,

and others and it goes all the way into Philadelphia from Reading.

Q. How large a City is Reading?

A. One Hundred Twenty-five Thousand (125,000) approximately.

Q. Philadelphia is one of the largest in the country?

A. Yes, sir.

The Court: What fare do they charge?

A. Seven cents. There is in some of the sections an eight cents fare.

Q. When did you first hear of any claim of the North Columbia Land Company contract—any claim thereunder?

Mr. Belser: I think that is irrelevant.

The Court: Taken subject to objection.

Witness: The time of the hearings before the Railroad Commission—a little more than a year ago.

Q. That was in 1927?

[fol. 688] A. Yes.

Q. Is the same true as to Shandon Annex contract or any claim under that?

A. Yes.

Q. What was the total figure you gave as to the cost of rehabilitating this system?

A. Between Five Hundred Fifty and Six Hundred Thousand Dollars.

Q. Mr. Belser examined you somewhat in detail as to the one hundred twenty-three thousand dollar item—what did that represent?

A. I would say that was just the kick-off. That was the very first expenditure that would have to be made to the street cars. I stated in my testimony the cars could not be continued without the expenditure of the other amount, and even after the other amount had been spent, there still must be further amounts spent to keep the road in operation.

Q. You were asked as to whether you wanted to discontinue operations of the street cars in the fall of 1925. Will you tell us what, if anything there was to prevent discontinuance in 1925, and it wasn't discontinued until 1927?

A. Nothing that I know of. We were all advised that there was no obligation to render a street railway service.

Mr. Belser: I object to that too.

The Court: Yes, I think that is true.

Mr. Lyles: I only meant to find out this—when you ask a man what he wants to do and what he intends to do, the information he gets seems to be competent for the purpose of explaining personal attitude. That is the only purpose I offer it.

The Court: I think all of it is competent except what he was advised.

[fol. 689] Q. Tell us, Mr. Jennison, why Broad River Power Company loaned Columbia Railway Gas and Electric Company money. You testified it did loan it money soon after the sale of the gas and electric property to Broad River Power Company?

A. The Broad River Power Company had then, and has now, a very large and substantial investment in gas and electric properties and a very decided interest in the successfud operation of those properties. It was also interested in the community as a whole, resulting from its investments. Because of that interest it advanced to the Columbia Railway, Gas and Electric Company money, and because further of its interest in the public itself this money was loaned for the purpose of permitting operations to continue. At that time it felt that was the proper thing to do.

Q. Why didn't it continue advancing money?

A. It could no longer stand the financial burden of those advances.

Q. What would have been the effect on the Broad River Power Company to have continued such advances or undergone such losses?

Mr. Belser: I don't think this witness is qualified to testify about that.

The Court: He can testify to anything within his knowledge.

Mr. Lyles: The past experience is the only real basis to judge the future. These questions involve to a large extent questions of judgment.

The Court: I think he can testify to what he does not know.

Witness: The money loaned to the Columbia Railway, Gas and Electric Company, which obviously would have

been necessary to continue it along, represented interest on between two and two and a half million dollars. If the Broad River Power Company's earnings were reduced by [fol. 690] those charges, its ability to finance its obligations to give gas and electric service through additional power plants and transmission lines would have been seriously handicapped. Furthermore there was evidently a further substantial amount of money which had to come from some source to rehabilitate the railway system. All of those things forced the management to decide that it could no longer—that is the management of Broad River Power Company—it could no longer continue to decrease its own earnings in those amounts.

Mr. Edmunds: It seems to me this, if the Broad River Power Company took any such action, there must be evidence of some minutes of the Broad River Power Company. I submit the proper testimony and the only proper testimony that can be submitted along the line of action of Broad River Power Company would be some minutes of its Board of Directors. This general statement of the witness as to what action the Broad River Power Company took is thoroughly incompetent, because the highest evidence of what a corporation does is by its corporate act, evidenced by its minutes.

The Court: I think the testimony is competent.

Q. I overlooked asking you on your direct examination this—it is charged in the complaint in this action that one of the respondents here, or one of the companies owning some of their stocks, had discontinued the street car service in Spartanburg, or endeavored so to do, and had been prevented from so doing by decision of the Supreme Court of this State. What company became interested in the Spartanburg Company?

A. The General Gas and Electric Company purchased the controlling interest in the stock of the Spartanburg Company.

Q. When was the purchase made, with reference to the decision of the Supreme Court.

[fol. 691] A. Afterwards.

Q. When you purchased, the street cars had been discontinued?

A. They had been discontinued.

Q. Do you know how long after the decision it was before the purchase?

A. I don't know exactly, but it was some time. I know the street cars had not been operating for some time when our interests took over the operation at Spantanburg.

Q. By some time you mean several months?

A. Yes, sir.

Q. These repairs to the cars and other things you have spoken of, that were done between the time of the purchase of the stock or some of the stock of Columbia Railway, Gas and Electric Company in the Fall of 1924 and the sale in, I think it was June 15th, 1925—within what period were a large portion of this done?

A. Much of the repairs were done immediately after the stock of the Columbia Railway, Gas and Electric Company was acquired, which was in September, 1924. Some of the costs would not appear until in 1925.

Mr. Belser: We object to all testimony about the books without producing the books.

Q. I believe, Mr. Jennison, you testified that your personal experience has been more of the operating end of the public utilities than on the financial end?

A. It has been.

Recross-examination.

By Mr. Belser:

Q. Mr. Jennison, your testimony about what this company could have done if it had been required to carry the street railway business relates to the operating end without much experience on your part of the financial end?

[fol. 692] A. No. When I answered on the financial end, I meant the raising of the necessary money through bonds and stocks—as an operator and as an executive in charge of operations, the financial side with respect to earnings particularly comes decidedly under my supervision and within my experience.

Q. Do you happen to know of your own knowledge, one way or the other whether or not Broad River Power Com-

pany ever issued any checks to Columbia Railway, Gas and Electric Company for advances you spoke of being made?

A. I don't know how that was handled.

Q. You don't know whether that was charges or cash advanced in the form of checks?

A. I don't know how it was handled.

Q. Do you know how much the losses in actual cash outlay for the year 1926 were for the street railway operations, distinct from the power end, and I want to get that separate?

A. I can't answer that. I can only tell you what the statements show to be the operating loss for that period.

Q. That includes, of course, the charges for power?

A. It does.

Q. Do you know how the proportion of the figures have been?

A. Forty-seven Thousand Six Hundred Thirty-six ($47,636.00) Dollars.

Q. For the year 1926?

A. Yes.

Q. You don't know what the power charges for that year were?

A. I haven't the information in my possession. I could get it for you.

Q. Wouldn't it be Forty or Fiffy Thousand Dollars?

A. No. I can get it for you, if you want it.

Q. Do you know what the net earnings—that is the difference between income and expenditures for the Broad [fol. 693] River Power Company for the year 1926 was?

A. No, sir; I have not those figures at hand at present.

Q. It would be over a million dollars?

A. I would not answer without referring to the statements.

Q. I have a statement up to August 31st, 1926. Take a look at that, please, on the left hand side of that, and tell me whether that is correct?

A. I cannot vouch for its correctness. It is so stated in this circular that the net earnings were a million eighty-one thousand dollars.

Q. Do you know whether the net earnings for the rest of the year were greater or less than that?

A. I do not know.

Q. If the net earnings for that year were a million dollars can you tell this Court that the loss of Forty-seven Thousand Dollars a year would bankrupt that Company?

A. I have made no such statement.

Q. Didn't you say that it couldn't continue to sustain losses such as it incurred?

A. I made this statement: I said it couldn't continue to sustain those losses and fulfill its obligations to give proper and adequate gas and electric service.

Q. When you furnish service you get paid for it?

A. We try to collect from our customers enough to yield a fair return and provision for depreciation on the property.

Q. If you do not know what the earnings for 1926 were, upon what do you base the statement that Broad River Power Company could not sustain the losses which it was undergoing? Wouldn't it make a difference whether a million and a half or five hundred thousand?

A. In the first place these earnings are before any charges—interest, preferred charges or anything else.

[fol. 694] Q. It has a statement that it has made, after that went into effect, some four hundred thousand dollars?

A. Yes.

Q. How much?

A. The difference is over five hundred thousand dollars, but there is in the earnings—that is the gross earnings for 1926—an item of One Hundred Twenty-six Thousand dollars, which is interest during construction, and which is not an item of earning.

Q. Of course that is an asset. You wouldn't put it down under the head of earning unless it was an asset?

A. It is not an assets. It is included in earnings at just what it says—"interest during construction."

Q. There is Five Hundred Thousand Dollars, as shown by the statement—you could still deduct forty or fifty thousand dollars and still make a living out of it?

A. I cannot state it any other way than I do: The continuance of these losses, had they been paid by the Broad River Power Company, would have so handicapped its ability to finance that it could not live up to its obligation. You must remember that every Hundred Thousand Dollars is interest on two million dollars. When bonds are

sold by this utility company they have to show to investors they will get a reasonable return on the bonds outstanding. Every dollar you take out of earnings lessens the earnings on the bonds. Every time you are cramped to the tune of two million dollars, it is a very serious handicap on the company. You have to get the effect upon the company's earnings in sustaining that loss.

Q. Your Company, in 1924, indicates the heaviest losses of One Hundred Thirty-eight Thousand Dollars?

A. I don't know how that statement was made up.

Q. At any event your figures that you have indicated it [fol. 695] was losing a lot more money when your company bought it than it has lost since?

A. The railway department of the Columbia Railway Gas and Electric Company was losing more money prior to the time of the acquisition by the General Finance Corporation than it was since.

Q. Yet your company thought it was good enough to buy?

A. The entire situation—putting the power and gas possibilities together justified the financial people making the investment.

Q. Taking into consideration the three or four departments of the Columbia Railway Gas and Electric Company which the Broad River Power Company bought, with those losses, it was a good enough thing to buy it?

A. That determination was made with the knowledge that the Canal Settlement, or the belief that the Canal Settlement would provide a separation of the railway department from the gas and electric department.

Q. They bought the stock and signed a contract about the Canal Settlement, which never provided anything about the separation of these departments—isn't that true?

A. They did not buy the stock until after conferences had been started with Canal Commission.

Q. No action had been taken by the Legislature?

A. No, it had not.

Q. You were one of the ones who recommended the purchase?

A. I don't believe my advice was asked at the time the original contract was made. I of course was conferred with before the stock was acquired, and my employers and my-

self felt that the entire situation, having in mind the future growth and possibilities in South Carolina, justified the investment.

[fol. 696] Q. Have you a copy of the original of the contract for the purchase of this stock from Mr. Robinson and his associates?

A. I never have seen the contract.

Q. You don't know what the price paid for this stock in these companies was?

A. No.

Mr. Le Pine: We want to offer in evidence deed from Columbia Railway, Gas and Electric Company to Broad River Power Company, dated June 15th, 1925, and we would like to ask leave to put in the record a printed copy instead of the original, if that is satisfactory.

Mr. Belser: We would like to have the minutes produced under which the deed was authorized, and the books showing the transaction. We have have no objection to the substitution of the copy. We understand they will produce the minutes authorizing the deed.

Deed from Columbia Railway, Gas and Electric Company to Broad River Power Company, dated June 15th, 1925, recorded June 26th, 1925, in Book C. T. of Deeds, at Page 604, introduced in evidence and marked Exhibit A-11.

E. R. KING sworn.

Direct examination.

By Mr. Le Pine:

Q. Mr. King, what is your profession or business?

A. Accountant.

Q. What position do you occupy with reference to Columbia Railway, Gas and Electric Company?

A. General Auditor.

Q. How long have you been general auditor of that company?

A. Since September, 1924.

Q. As general auditor, do you have general supervision and charge of the accounts and books of the company?

[fol. 697] A. I have general supervision—general charge.

Q. Have you with you the books of the Columbia Railway, Gas and Electric Company, showing its operating receipts and disbursements for railway service?

A. I have for two or three years.

Q. Will you get the books for the year 1927?

A. (Witness gets book covering that year.)

Q. What system of accounting do you employ in keeping the books of the Columbia Railway Gas and Electric Company, so far as operating receipts and disbursements are concerned?

A. A system prescribed by the Interstate Commerce Commission.

Q. Do you know whether or not that is the system that is prescribed by the Railroad Commission of South Carolina for keeping the books of street railway companies?

A. It is.

Q. That system has, as I understand it, a classification of the various receipts from different sources, and a classification of the operating expenses?

A. It does.

Q. How were those receipts divided—I mean generally into different headings?

A. Under different headings.

Q. Showing receipts from different sources?

A. Showing receipts from passengers, freight, mail, etc.

Q. Some of those are applicable to a particular company and some are not?

A. Not all are used by all companies.

Q. Depending on whether you have that sort of receipts or that sort of disbursements?

A. That is right.

Q. You have examined these books to determine what the operating revenue from the street railway business of this [fol. 698] company has been for several years last past?

A. I have.

Q. I wish first, Mr. King, you would give us the gross operating expenses of the Columbia Railway Gas and Electric Company since June 15th, 1925 from its street railway business and previous to June 15th, 1925—from the street railway department of its business?

Mr. Belser: We object to the testimony on the ground that the losses, if any, are irrelevant, and do not consti-

tute a defense. We would like to object further to the witness testifying from the books unless he made the books himself, or can testify as to the entries being correct.

Q. These books are kept under your supervision?

A. They are.

Q. You do not make the actual entries yourself?

A. I do not.

Q. Do you have occasion to check these books to determine their accuracy?

A. I do.

Q. Have you checked them from time to time for that purpose?

A. I have.

Q. You come from Reading to Columbia from time to time to supervise the accounting system here?

A. I do.

Q. Are these books which you have accurate?

A. They are.

Q. The entries in that book are made up from what? What is the source of the entries which are in the books which you have?

A. The source is the invoices rendered by various people from whom we purchase materials for operation.

Q. These are entered directly from this memorandum to the book?

A. They are.

[fol. 699] Q. The book itself, is that the original entry book?

A. It is.

Q. Who were the entries in this book made by?

A. I can't say—who the particular employee that made the entries in these books was, I can't say. No doubt various employees.

Q. Could you tell by looking at the book who made the entries?

A. No, I could not.

Q. You have the vouchers from which these entries were made?

A. I have.

Q. Have them here in Court?

A. I have.

Q. Will you refer to the operating expenses as shown in that book and tell me whether they contain letters and

numbers identifying the various vouchers from which the entries were made, or do you know that they have without examining the book?

A. I know that without examining the book.

Q. The book refers to the voucher, and you can produce the voucher for that entry?

A. Yes, sir.

Mr. Belser: I feel it is a matter of grave importance to have the people who made the book and who are acquainted with the book to testify about it; especially in view of the discrepany in the figures used by the company of the alleged losses for 1923 and 1924. The person who made the books ought to be put on the stand and cross examined about it.

Mr. Le Pine: There is no discrepancy between the books and figures. There is a decision which we will show Your Honor, in the case of S. A. L. Ry. vs. Railroad Commission, 86 S. C. 91, in which the Supreme Court held it was not necessary to go into that detail, and that it was competent to prove the books in the method in which we are proving these books.

[fol. 700] The Court: I would say I think you have made sufficient proof, but it is customary to go a little further. The witness testifies the books were made under his general supervision. I see no reason why he couldn't go ahead and testify.

Mr. Lyles: (Hands up the case of S. A. L. Ry. vs. Railroad Commission, 86 S. C. 91.)

The Court: I think this witness has sufficiently qualified.

Mr. LePine: We will bring in every witness who made these entries.

The Court: That case holds what I thought was the law. If there were thousands of men who made entries on those books you wouldn't be required to produce them.

Mr. Belser: There ought to be some man in Columbia who had charge of these books and lives here in Columbia where they were kept. There must have been some head bookkeeper in Columbia, and I think he ought to be required to testify.

The Court: I am not going to require them to produce a witness to prove every entry.

Q. Can you tell me, Mr. King, from the books of the company the operating receipts and disbursements of the

Columbia Railway Gas and Electric Company from the street railway in the year 1927?

A. The operating revenue for two months ending February 28th, 1927, was Five Thousand Nine Hundred Eighty-two and 15/100 ($5,982.15) Dollars. Operating expenses and taxes for the same period, Sixteen Thousand Nine Hundred Thirty-five and 23/100 ($16,935.23) Dollars.

Q. The deficit or profit was how much?

A. Ten Thousand Nine Hundred Fifty-three and 08/100 ($10,953.08) Dollars.

Q. Was that deficit or profit?

A. Deficit.

[fol. 701] Q. Turn to the book and tell us where those entries of these operating receipts were made and on what page is it?

A. The book—it is not numbered.

Q. What is the designation of the book?

A. "Columbia Railway, Gas and Electric Company, Detail, revenue, expenses, storage, miscellaneous building expenses."

Q. Turn to the heading of "operating revenue" and give us the revenue?

A. Passenger revenue for the period, two months, ending February 28th, 1927, account number 101, Five Thousand Eight Hundred Fifty-five and 54/100 ($5,855.54) Dollars; account number 104, "Mail" Forty-five and 42/100 ($45.42) Dollars; account number 110, "Station and car privileges" Eighty-one and 19/100 ($81.19) Dollars.

Q. Turn to the pages in the book showing operating expenses and taxes for the same period?

A. Account number five "rail fastenings and joints" Ten and 94/100 ($10.94) Dollars; account number six "special work" Eighteen and 60/100 ($18.60) Dollars; account number eight, "track and roadway labor" Three Hundred Fifty and 27/100 ($350.27) Dollars; account number ten "paving" Eighty-five and 11/100 ($85.11) Dollars; account number 11 "cleaning and sanding track" One Hundred Seventeen and 56/100 ($117.56) Dollars; account number 20 "poles and fixtures" Two Hundred Fourteen and 24/100 ($214.24) Dollars; account number 22 "Distribution or system" One Hundred Twelve and 60/100 ($112.60) Dollars; account number 28-A "Automobile ex-

pense" Thirty-eight and 88/100 ($38.88) Dollars; account number 29 "Superintendent's equipment" One Hundred Twenty and 38/100 ($120.38) Dollars; Account Number 30, "Passenger and combination cars" Seven Hundred Twenty-one and 98/100 ($721.98) Dollars; account 33 "Electric equipment of cars" Five Hundred Twenty-nine and 47/100 ($529.47) Dollars; account 37 "shop expenses" [fol. 702] Fifteen and 09/100 ($15.09) Dollars; account number 57 "substation employees" Six Hundred Sixty and 80/100 ($660.80) Dollars; account 59 "power purchased" Thirty-nine Hundred and 60/100 ($3,900.60) Dollars; account number 63 "superintendent of transportation" Eight Hundred Fourteen and 04/100 ($814.04) Dollars; account 64 "passenger conductors and motormen" Thirty-eight hundred Seventy-eight ($3,878.00) Dollars; account number 67 "miscellaneous car service expenses" Two Hundred Sixteen and 63/100 ($216.63) Dollars; account number 69 "station expenses" Eighty-three ($0.83) cents; account number 70 "car house employees" Four Hundred Fifty and 27/100 ($450.27) Dollars; account number 71 "car house expenses" Eighteen ($18.00) Dollars; account number 72 "operation of signal and so forth" One and 29/100 ($1.29) Dollars; account number 78 "other transportation expenses" Twenty-six and 78/100 ($26.78) Dollars; account 78-a "automobile expenses" Four and 80/100 ($4.80) Dollars; account number 83 "salaries and expenses of general officers" Three Hundred Sixty-six and 68/100 ($366.68) Dollars; account number 84 "Salaries and expenses of general office clerks" Two Hundred Seventy ($270.00) Dollars; account number 85 "General office supplies and expenses" One Hundred Fifty ($150.00) Dollars; account number 86 "law expenses" Two Hundred Four and 25/100 ($204.25) Dollars; account number 88 "pensions and gratuities" Four Hundred Six and 68/100 ($406.68) Dollars; account number 89 "miscellaneous general expenses" One Hundred Eighty and 79/100 ($180.79) Dollars; account number 92 "injuries and damages" Six Hundred Thirty-five and 06/100 ($635.06) Dollars; account number 93 "insurance" One Hundred Twenty and 23/100 ($120.23) Dollars; account number 94 "stationery and printing" Thirty-eight and 90/100 ($38.90) Dollars; ac- [fol. 703] count number 95 "Store expenses" Thirty-three

and 61/100 ($33.61) Dollars; account 100-a "Automobile expense" Tinety-one and 44/100 ($91.44) Dollars. I might state that I have read two or three "automobile expenses, and those are in the difference divisions—one under equipment, one under conducting transportation and one under general expenses. Account number 100-b "taxes" Twenty-one Hundred Forty-seven and 26/100 ($2,147.26) Dollars.

Mr. Edmunds: Those taxes there—that is 1927, is it?

A. Two months of 1927.

Mr. Edmunds: Were those taxes paid in 1927?

A. They would be paid the beginning of 1928.

Mr. Edmunds: That amount was not paid—it was allocated?

A. It is on an accrual basis—estimated amount of taxes for that period.

Mr. Edmunds: What you are reading out—are those actual disbursements or what you estimate you have to disburse?

A. In the case of taxes it is an estimate of what the taxes are for that period. Ninety-nine per cent of the other items I read, they are actual disbursements.

Mr. Edmunds: In the case of power?

A. That is a case of actual disbursement.

Mr. Edmunds: Paid to whom?

A. Broad River Power Company.

By Mr. LePine:

Q. Mr. King, turn back to the first item of disbursement you read under "operating expenses"—have you the vouchers here to support those figures?

A. Yes, sir.

Mr. Belser: I think there is no reason why we should go into all the details of each item of expense. I am per- [fol. 704] fectly willing, so far as we are concerned, to put in the original books, and if he has made a collative statement of it, it is all right to put that in and testify from that. We would like to have the books in evidence and cross examine the witness who made the books. So far as going over each page, we don't think that is necessary. We don't think the matter of loss makes any difference anyhow.

Mr. LePine: That is exactly what we started out to do.

Mr. Lyles: Under the rule, as I understand it; these gentlement have the right to cross examine any witness testifying as to the detail of any particular item, and the right to require the bringing in of the details to support that. We are not seeking in any way to avoid the questioning of any accounts or any explanation of them. All we want these gentlemen to waive is detailed proof of the items they do not question.

The Court: That case so holds, and I so hold.

Mr Edmunds: Do you intend to put the books in evidence?

Mr. LePine: We will have the books put in evidence. He has a statement made up from the books, with exactly the same headings as contained in the books, and it will be much easier for him to testify from that, and then you can refer to the books about any item you want explained.

Mr. Belser: I think that will be satisfactory. Suppose you give us a copy of each of the tabulated statements so that we may cross examine him about any item we see fit to do. So far as his testifying from each page and the entries, we are willing to waive that.

Mr. LePine: We will have the books marked up later.

Q. Mr. King, you have prepared a summary and detailed statement of what the books show as to operating receipts, operating expenses and operating deficit for the various years from 1927 back. First give us the gross amounts [fol. 705] of operating revenue and gross amount of operating expenses and taxes and the operating profit or deficit?

A. I have the details only back as far as 1920.

Q. You have the gross items back how far?

A. To 1910.

Mr. Belser: I don't understand that our agreement, so far as this is concerned, went back of his supervision of the books.

Q. Start with 1925. You were in charge of the books in 1925?

A. Yes, sir.

Q. What was the operating revenue from the street railway department of Columbia Railway Gas and Electric Company for the year 1925?

A. One Hundred Fifty-eight Thousand One Hundred Twenty-three and 93/100 ($158,123.93) Dollars.

Q. Operating expenses and taxes were how much?

A. Two Hundred Forty-five Thousand Nine Hundred Thirty-Six and 06/100 ($245,936.06) Dollars.

Q. What was the operating deficit?

A. Eighty-seven Thousand Eight Hundred Twelve and 13/100 ($87,812.13) Dollars.

Q. For the year 1926, what was the total operating revenue?

A. One Hundred Thousand Twenty-Seven and 57/100 ($100,027.57) Dollars.

Q. Operating expenses and taxes?

A. One Hundred Forty-seven Six Hundred Fifty-seven and 92/100 ($147,657.92) Dollars.

Q. The operating deficit was how much?

A. Forty-seven Thousand Six Hundred Thirty and 35/100 ($47,630.35) Dollars.

Q. Give us again the operating revenue for the first two months of 1927?

[fol. 706] A. Operating Revenue Five Thousand Nine Hundred Eighty-two and 15/100 ($5,982.15) Dollars.

Q. Operating expenses and taxes were how much?

A. Sixteen Thousand Nine Hundred Thirty-five and 23/100 ($16,935.23) Dollars.

Q. The operating deficit was how much?

A. Ten Thousand Nine Hundred Fifty-three and 08/100 ($10,953.23) Dollars.

Q. You have a statement in detail which you have prepared from the books as to items which went to make up the operating revenue and operating expenses?

A. I have.

Q. You have given the details of operating revenue for the year 1927. Will you give us the details of operating revenue for the year 1926—that is the items which make up the operating revenue?

Mr. Edmunds: I don't want to suggest to you anything, so far as you are concerned. If you are going to read from it, he can just offer it in evidence. Instead of having him read from the statement, if he wanted to put it in, that will do.

Mr. LePine: Would you be willing that the statements be put back to 1920, and we will connect it up later? We offer in evidence this summary of operating revenue and

operating disbursements beginning with 1927 and going back and including 1920 on the understanding that we will later put a witness on the stand who will testify as to the correctness of the books prior to the time Mr. King took charge of the books and that we will also have the books marked in evidence.

The above statement was marked Exhibit A-12.

Mr. Belser: We have no objection to that, except it goes back to the first objection made.

Mr. Lyles: You are waiving, as I understand it, your [fol. 707] technical objection—not as to relevancy—to require us to prove further the entries in these books during the time Mr. King was in charge. You waive your technical objections to Mr. King's statement, provided we put up Mr. Tugh to prove the accuracy of the books?

Mr. Page: We are not waiving our objection to the books. We are not objecting to the placing of the statements in in lieu of the books—so far as the statements are concerned. We object to the relevancy of the books.

Mr. Lyles: I understand your objection as to relevancy to the whole thing. The question we ask is: Do you want us to bring all the clerks who made the entries in the books here to testify?

Mr. Edmunds: No; we so stated.

Mr. Lyles: The only thing you want is for us to put up Mr. Tugh to prove the books?

Mr. Edmunds: We have never admitted that Mr. King is a proper witness to prove these particular books. We take the position that his supervision is not sufficient.

Mr. Belser: So far as his testifying from the books, we waived all that.

Mr. Lyles: We will have to bring the clerks who made the books.

Mr. Belser: Can't you bring Mr. Costello?

Mr. LePine: Mr. Costello made no more entries in the books than Mr. King. We will have to bring the clerks who made the entries.

Q. Now, Mr. King, the receipts as shown in these books of operating revenue since June 15th, 1925, are those the total receipts from all sources of the Columbia Railway, Gas and Electric Company?

A. From the railway department.

[fol. 708] Q. Since June 15th, 1925?

A. The total receipts.

Q. Since June 15th, 1925—They include merely the receipts from the railway department?

A. That is right.

Q. The figures that are contained in these books as to operating expenses and taxes since June 15th, 1925, are the total actual expenditures by the company for all purposes?

A They are.

Q. The taxes you stated a moment ago were pro rated or put on an accrual basis?

A. Yes, sir.

Q. Does that mean that prior to January 1st, 1927, the items that are contained on the books for taxes were actually paid? That is the items before the first of January, 1927, were they actually paid out for taxes?

A. Yes, sir.

Q. After January 1st, 1927, the figure that you gave for taxes is based merely on an accrual or apportionment basis of the taxes as applied to two months?

A. That is true.

Q. Those taxes were actual obligations which had to be paid at some time?

A. Yes, they were obligations that had to be paid.

Q. Do you know whether the taxes that were on the books in 1927 were actually paid?

A I do not.

Q. The others you know were paid?

A. I know the others were paid.

Q. I understood you to testify that the revenues received by the street railway after June 15th, 1925, and the revenues received from the street railway department prior to [fol. 709] June 15th, 1925 came from what source?

A. They came from receipts from passengers on street cars, from station and car privileges, such as advertising—transportation of mail.

Q. That was the nature of the receipts that were included in the street railway receipts in the book prior to June 15th, 1925?

A. It is.

Q. Do those receipts prior to June 15th, 1925—those were all the receipts that came from the operation of the street railway in any manner?

A. Yes, sir.

Q. The figures that you have given for operating expenses—what was the general nature of those expenses?

A. They covered the maintenance of the track, of the equipment, the wages of the motormen and conductors, power used by the railway, stationery used by the railway, taxes applicable to the railway department, and insurance.

Q. In other words they include what would ordinarly be called operating expenses?

A. That is it.

Q. Do those figures include anything for depreciation?

A. They do not.

Q. Are you familiar as an auditor with the usual charge for depreciation on the books of street railway companies —as to percentage?

A. In a general way I would say I was familiar with it.

Q. What is the customary charge on books for depreciation?

Mr. Edmunds: I object. If they have not in the auditing of their own books charged off anything for depreciation, they are not entitled now to the benefit of it at all. They are offering their own books to show what they themselves received and what they themselves, during the [fol. 710] course of these several years charged off.

Mr. LePine: I withdraw the qeustion and will ask another question.

Q. Operating expenses do not include depreciation?

A. No, sir.

Q. Depreciation is a separate item, which is not set up under the items of expenses?

A. It is not in these figures.

Q. That is not customarily shown in operating expenses, is it?

A. Depreciation charge is customarily shown with the expenses, but as a separate item.

Q. What is the usual amount charged for depreciation?

Mr. Edmunds: I renew my objection.

The Court: My view at this time is that it is competent for what it is worth.

Q. What is the usual charge?

A. I would say four per cent. of the value of the property.

Q. In your figures as to operating expenses for this period in question, is there any entry or any charge made for interest on any obligations which the company might have?

A. Not any.

Q. Those items are not included? Items of that character are not included under the head of operating expenses in the figures you have given?

A. No, sir.

Q. That is true of the figures for all these years in question?

A. Yes, sir.

Recessed for dinner.

Mr. LePine: I thought we understood the arrangement that was made with reference to the books, but some of my associates seem to think that the statement made by [fol. 711] Assistant Attorney General as to the objections reserved indicated that there was some question as to what the understanding was. I would like to get that cleared up before we proceed any further.

Mr. Edmunds: I didn't know that there could possibly be any misunderstanding about it. I am frank to say that I do not recall exactly what the Assistant Attorney General said, but when the witness was on the stand and undertook to read each of the items from these books, we stated that, if they would introduce the books in evidence, we would not require any further proof as to the correctness of the books themselves, but that we still interposed our objection as to the relevancy, and that prior to the time when this witness said that he was the supervising auditor, that the correctness of the books must be established by the party who was in charge of them.

Mr. Lepine: That was my understanding as you have stated. If that is the understanding, I might say that, as

far as the schedule we put in, I don't care about them—the books disclose the same facts.

Mr. Edmunds: You don't expect to leave the books in the hands of the Court to go through them?

Mr. Lepine: We are perfectly willing to do that, if the Court cares to take custody of the books, we are perfectly willing to do that.

Mr. Lyles: They have conceded the use of the statements based on the books.

Mr. Edmunds: We conceded that these statements that he was about to read from were taken from the books, and that it would be unnecessary to read from them—that he could [fol. 712]offer the statements *the statements* in evidence.

Q. Mr. King, what experience have you had as an auditor and for how many years?

A. I have been in the accounting business privately since 1909.

Q. How long have you been connected with the so-called Barstow Company?

A. Since 1913.

Q. That includes Columbia Railway, Gas and Electric Company?

A. Yes, sir.

Q. You have been connected with that company in the capacity of general auditor since September, 1924?

A. Yes, sir.

Q. You were connected with that Company in the capacity of General Auditor at the time it conveyed certain property to the Broad River Power Company?

A. Yes, sir.

Q. I don't care for you to describe the property, but I wish you would state in a brief general way what the nature of the properties were that were conveyed by Columbia Railway Gas and Electric Company to Broad River Power Company on June 15th, 1925? I mean with reference to being gas and electric or otherwise?

A. Conveyed the gas and electric properties.

Q. It had previously been owned by Columbia Railway Gas and Electric Company?

A. Yes.

Q. Are you familiar with the financial condition of the Columbia Railway, Gas and Electric Company as to assets

and liabilities immediately after the conveyance by it of its gas and electric properties to the Broad River Power Com-
[fol. 713] pany, excluding any question of stock, either common or preferred, exclusive of the street railway system? By that I mean to include only current liabilities?

A. Yes.

Q. Can you state what the current assets of Columbia Railway, Gas and Electric Company were immediately after the conveyance was made?

A. As of July 31st, 1925, which was the first date that there was a statement made after the conveyance, the current assets were "materials and supplies Thirteen Thousand Five Hundred twenty-one and 94/100 ($13,521.94) Dollars," "insurance premiums paid in advance" One Hundred Thirty-five and 54/100 ($135.54) Dollars; "working funds in hands of employees" Four Hundred ($400.00) Dollars; "Cash" Fifty-one Thousand Four Hundred Sixty-nine and 78/100 ($51,469.78) Dollars; "accounts receivable" Nine Thousand Six Hundred Eighteen and 66/100 ($9,618.66) Dollars.

Q. That does not include, as I understand it, the Street cars and the street railway system?

A. It does not.

Q. That is merely current assets?

A. Yes.

Q. What were the liabilities, and of what did they consist?

A. Current liabilities were "notes payable" Seven Thousand Six Hundred Eighty-five and 28/100 ($7,685.28) Dollars; "accounts payable" Fifty-six Thousand Five Hundred Forty-seven and 77/100 ($56,547.77) Dollars; "loans payable" Twenty Thousand ($20,000.00) Dollars; "paving assessments" Three Thousand Two Hundred Fifty-five and 97/100 ($3,255.97) Dollars; "conductors deposits" Sixty ($60.00) Dollars; "ticket liability" Twenty and 14/100 ($20.14) Dollars; accrued taxes Eleven Thousand Six Hundred Fifty-five and 32/100 ($11,655.32) Dollars.

[fol. 714] Q. I notice that you have given a figure as to paving assessments Three Thousand Two Hundred and fifty-five and 97/100 ($3,255.97) Dollars—you were a witness, were you not, before the Railroad Commission in this matter?

A. I was.

Q. At that time you were asked to give a statement of the assets and liabilities of this company as of some date?

A. I believe so.

Q. It has been testified on a hearing there—did you hear Mr. Tatum testify?

A. Yes, sir.

Q. He testified as to statements made by you before the Railroad Commission. (Refreshing his recollection from the typewritten transcript of the testimony.) In his statement you recall that he stated that you testified that there were paving assessments to the amount of Thirty-three Thousand Two Hundred Fifty-five and 97/100 ($33,255.97) Dollars. Did you so testify?

A. I could not have, because that figure never appeared.

Q. Were you testifying at that time from the same memorandum?

A. Yes.

Q. It was a typographical error in transcribing the minutes and putting Thirty-three Thousand dollars instead of three thousand dollars?

A. Must have been.

Q. Do you know where these assets that you have spoken of were located?

A. Columbia, South Carolina.

Q. Subsequent to the transfer of this gas and electric property to Broad River Power Company, did the Columbia Railway, Gas and Electric Company continue to operate the street railway?

A. It did.

[fol. 715] Q. Did you continue to keep the books of the Company, or supervise the accounting of the company after that date?

A. Yes.

Q. Did the Columbia Railway, Gas and Electric Company, after that date, make any reports to any public bodies under your supervision?

A. Yes.

Q. What were they—tax reports?

A. Tax reports and reports to the Railroad Commission.

Q. Mr. King, the assets that you have testified to as current assets, were of course carried on the books as current

assets. Did the Company have a property account, or separate account of any sort under which they kept their property which they had?

A. Yes.

Q. Can you give us what the books or the book value of that property is stated to be?

A. One Million Nine Hundred Seventeen Thousand, Nine Hundred Twenty-four and 98/100 ($1,917,924.98) Dollars, as of July 31st, 1925.

Q. In case of a property of this kind—on one side of the ledger you carry a property valuation and then from time to time you charge off on the other side of the ledger a certain amount for accrued depreciation so that, in order to determine the true book value of the property, you must deduct from the property value as shown by the books reserves for depreciation—is that true?

A. Yes.

Q. Can you state how much the books of the company show was reserves for depreciation chargeable against this same property?

A. I will have to get that figure from the office.

Q. To determine the true book value of the property, I mean what it is actually worth according to the books, the [fol. 716] difference between those two figures would give you the true book value?

A. Yes.

Q. What you put on the asset side as reserve for depreciation doesn't mean you have that much money in the bank?

A. No, sir; it wouldn't be on the asset side—it would be on the liability side.

Q. That wouldn't mean you owed anything, but what you charged off against the property?

A. Yes.

Q. This railway property and these physical assets that you have testified with reference to, aside from the current assets, where was that property located?

A. In Columbia, South Carolina, and its vicinity.

Q. You also have been the general auditor of Broad River Power Company since its organization?

A. Yes, sir.

Q. As such you have had general supervision of its books?

A. Yes.

Q. Can you tell me what were the outstanding securities of Broad River Power Company as of December 31st, 1927?

A. Yes.

Q. First give me the bonds issued and the amount of bonds outstanding?

A. Broad River Power Company first and refunding mortgage call bonds, series A, due September 1st, 1954, Five Million Seven Hundred Sixty-four Thousand Seventy $5,764,070.00) Dollars. Broad River Power Company ten years, six and a half per cent. secured sinking fund, call bonds, due November 1st, One Million Three Hundred Eighty-five Thousand Six Hundred Twenty-five ($1,385,-625.00) Dollars.

Q. Those are the bonds that have been issued, executed and sold since its organization?

[fol. 717] Yes, sir.

Q. Who own those bonds? Are they closely held, or are they held by the general public?

A. In the hands of the general public.

Q. Do you know whether General Gas and Electric Company, or its subsidiaries own those bonds?

A. So far as I know they own none of them.

Q. Has Broad River Power Company, since its organization, issued and sold any preferred stock, and, if so, how much, and of what class?

A. It has issued and sold preferred stock. Outstanding December 31st, 1927, Three Million Eight Hundred Nine Thousand Five Hundred ($3,809,500.00) Dollars par value, seven per cent cumulative preferred stock.

Q. Who is the owner of that preferred stock?

A. It is all in the hands of the public.

Q. By the public you mean including or excluding General Gas and Electric Company?

A. I mean to exclude it.

Q. Who is the owner of the common stock of Broad River Power Company?

A. General Gas and Electric Corporation.

Q. Have you caused to be prepared under your supervision a table showing the receipts by lines from the street railway business of the Columbia Railway, Gas and Electric Company over a period of time, and if so, what period?

A. Yes; from the beginning of 1925 to March, 1927.

Q. You have prepared separate sheets for each line, and then a tabulation consolidating the tables which were made?

A. Yes.

Tables above mentioned introduced in evidence and marked Exhibit A-13.

[fol. 718] Mr. Edmunds: That is subject to our objection as to relevancy.

Cross-examination.

By Mr. Edmunds:

Q. Mr. King, your home is where?

A. Reading, Pa.

Q. You are general auditor for the Columbia Railway, Gas and Electric Company and the Broad River Power Company?

A. Yes, sir.

Q. Have you any connection with the General Gas and Electric Company?

A. I am general auditor for all of the sub-sidiaries controlled by the General Gas and Electric Company.

Q. You don't audit for the General Gas and Electric Company?

A. No, sir.

Q. You submit, however, the statements of the Broad River Power Company and Columbia Railway, Gas and Electric Company and the other subsidiaries to the General Gas and Electric Company?

A. That is right.

Q. How often do you come to Columbia for the purpose of supervising the books of the Broad River Power Company and of the Columbia Railway Gas and Electric Company?

A. It varies.

Q. Give us an average?

A. I would say I am in Columbia three to five times a year, and at least that many times I have Mr. Costello come to New York or Reading to confer with me regarding them.

Q. Who is Mr. Costello?

A. The local man in charge of the accounts in Columbia.

[fol. 719] Q. How long has he been in charge of the accounts in Columbia?

A. Since the latter part of 1924.

Q. When he goes to Reading to confer with you, does he take the books of both companies there?

A. No, sir.

Q. Just brings statements?

A. Yes, sir.

Q. When you come to Columbia, do you bring any assistants with you to audit the books, or do you do it all personally?

A. I don't do it all personally. At times I have assistants here.

Q. Is that the general rule?

A. I wouldn't say it is a general rule, to bring outside assistance. I consider Mr. Costello a permanent assistant.

Q. Do you bring some one from the Reading office to assist in the auditing of the books, or do you do that work yourself?

A. I do the general supervising myself and general examining myself.

Q. Is your duty confined to the general examining of the books or do you supervise the writing up of the books during the course of the year?

A. I hardly know how to answer that. It is physically impossible to stand over the men that are transcribing the entries in these books.

Q. Especially if you were in Reading?

A. Even if I were in Columbia it is true. If you could put the question in some other way, I might be able to answer it.

Q. Is your work principally the auditing of the books after they are all written up and all entires made, or do your duties relate to your supervising of the entries as [fol. 720] made?

A. They relate more as to the entries as made and the formulation than they do examining the books after they are made.

Q. Tell us what method you use to supervise the entries?

A. I hardly know how it would be described.

Q. You ought to know what you do?

A. If there are accounting entries and problems to be recorded on the books of the Columbia Railway, Gas and

Electric Company or Broad River Power Company that are not in the general routine of accounts, very many times I prepare them myself and send them by mail or bring them personally to be transcribed in the books.

Q. That is, when you say there is some unusual account?

A. I don't know that I used the word "unusual," but there are always in companies of this size or any company, there are items of accounting that are out of the usual routine of paying bills and receiving cash.

Q. Is that the extent of your supervision? If not, in what other manner do you supervise generally the writing up of these books?

A. I think I have made that as plain as I can, which is covered by the word general. I do supervise them generally.

Q. You have in Court here today what books of the Columbia Railway Gas and Electric Company—that is the years?

A. For 1926, and 1927. I have 1925 also, I think.

Q. What books have you in Court of the Broad River Power Company?

A. None.

Q. Where are the books of the Broad River Power Company?

A. In the office—in the Arcade Building.

Q. The same building where the offices of the Columbia Railway, Gas and Electric Company are?

[fol. 721] A. Yes, sir.

Q. Who is in charge of these books locally?

A. Mr. Costello.

Q. There has been introduced in evidence a deed from Columbia Railway, Gas and Electric Company to the Broad River Power Company, signed W. S. Barstow, president. Is W. S. Barstow also president of Broad River Power Company?

A. I don't know.

Q. How long have you been connected with the Broad River Power Company?

A. Since its incorporation.

Q. Was he ever president?

A. I think he is president, but I don't know.

Q. Do you know him personally?

A. Yes, sir.

Q. Have you ever heard him refer to his being president of Broad River Power Company?

A. Not to my recollection.

Q. Never heard him referred to as the president?

A. I misunderstood your question. I think I have.

Q. In auditing the books of the Broad River Power Company, did you ever have occasion to refer to the minute books?

A. Occasionally.

Q. Those minute books do not show who is President of the Broad River Power Company?

A. They no doubt do.

Q. You have never thought to inquire, or never noticed who was President of Broad River Power Company?

A. I cannot think of any interest I would have in it.

Q. You are not interested in who is the executive officers of either company you are employed by?

A. Yes, in a general way.

[fol. 722] Q. Never go to the office of the President of either company?

A. I go to the office of Mr. Barstow. I go to the office of all of the executives of Broad River Power Company.

Q. When you got to the office of Mr. Barstow, you don't find out?

A. Not ask that.

Q. In what capacity is he when you go there?

A. Mr. Barstow is president of a great number of companies that are controlled by General Gas and Electric Company. I cannot tell you from memory which ones he is President of. In going to his office I have not gone with the thought in mind of addressing him as president of any of these corporations.

Q. You don't know whether he was at any time President of Columbia Railway, Gas and Electric Company?

A. I can refer to the minutes.

Q. I asked you if you knew?

A. From my memory I don't know.

Q. Do you know any of the other officials of the Broad River Power Company?

A. Yes, sir.

Q. You don't happen to know the president?

A. Yes, sir; I do know him.

Q. Who is he?

A. I know Mr. Barstow.

Q. He is President, is he?

A. I said from my memory I don't know.

Q. I asked you if you knew any other officials and you said you did, and I said do you know the President, and you said you knew Mr. Barstow. Why did you say you knew Mr. Barstow, if you didn't know he was president? [fol. 723] A. I know Mr. Barstow personally. I don't know from my recollection and memory at this minute whether Mr. Barstow is president of Broad River Power Company or not.

Q. Among the vouchers paid to Executives, you have never come across a voucher paid to W. S. Barstow as President of either of these companies?

A. I have not.

Q. He doesn't draw any salary?

A. No, sir.

Q. When this deed was made, certain property was transferred by the Columbia Railway, Gas and Electric Company to the Broad River Power Company. Was that property entered upon the books of the Broad River Power Company among its assets?

A. Yes, sir.

Q. At what valuation?

A. I would have to refer to the entries to tell you that.

Q. On what book of the Broad River Power Company is it entered up on the assets of the Broad River Power Company?

A. On its ledger.

Q. Of what year or years?

A. In the years which these assets were acquired.

Q. When was that?

A. They are continually acquiring assets.

Q. I am speaking of the assets acquired under this deed of date June 15th, 1925?

A. That was taken on June, 1925.

Q. It will be on the ledger as of that date?

A. Yes, sir.

Q. Do you remember at all what those assets were written on the books of the company as of that date?

A. I don't remember. I can give you the exact figures when I have the books.

[fol. 724] Q. I am asking you approximately?

A. I wouldn't like to presume a figure. It is a sizable figure.

Q. Two or three million dollars?

A. Yes, more than that.

Q. As Auditor of the Broad River Power Company for the year 1927, did you make up a statement of the assets and liabilities? That is showing the general balance sheet December 31st, 1927?

A. It was prepared under my supervision generally.

Q. Have you such a sheet with you?

A. No, sir: I have not here.

Q. I hand you this, and will ask you to look over it and see whether you can say that is a correct copy of such balance sheet. The paper that I hand you being marked for identification A-10?

A. I can't tell you whether this is a correct copy of the balance sheet or not.

Mr. Le Pine: I have the balance sheet, if you want to let the witness see whether it is correct or not.

Witness (after referring to original balance sheet). It is correct.

Paper marked A-10, for identification, offered in evidence and marked Exhibit A-10.

Mr. Le Pine: We object to that as incompetent and irrelevant and immaterial and has no bearing on any of the issues in this case.

The Court: Admitted at this time.

Mr. Lyles: I notice part of the balance sheet is a statement of earnings.

Witness: I did not make my answer except as to the balance sheet. I testified only as to the balance sheet, Mr. Edmunds.

[fol. 725] Q. Where do you stop in checking it?

A. Right there (indicating).

Q. You stopped at the figure Twenty-three Million Three Hundred Seventy-one Thousand Three Hundred Five and 31/100 ($23,371,305.31)?

A. Yes, sir.

Q. Have you any statement of the earnings for the year which ended December 31st, 1927?

A. Of Broad River Power Company?

Q. Yes, sir?

A. Yes.

Q. Look at these figures and see if they are correct, as contained on that statement, Exhibit A-10?

A. The statement at the bottom of the sheet headed "Statement of earnings for the twelve months' period ending December 31st, 1927," is correct, excluding from operating expense reserves made for depreciation during the year 1927.

Q. You have the operating expenses and taxes deducted from the total gross earnings there?

A. Yes, sir.

Q. That gives net earnings for 1927, as shown by the statement of One Million Five Hundred Sixty-six Thousand Three Hundred Sixty-six and 18/100 ($1,566,366.18) Dollars. That is correct, isn't it?

A. Yes, sir; but before any deduction is made for depreciation.

Q. You would say this looks like one of the form of statements gotten out by your company, wouldn't you?

A. It doesn't look like the form of statement I prepare. It is probably a statement prepared by some one in our New York Office or some Banking House.

Q. It does give the figures correctly, with one exception, the depreciation?

[fol. 726] A. Yes, sir.

Mr. Le Pine: Our objection—we would like to continue against the whole paper and all testimony relating to that subject.

Q. Leaving that phase of the matter for the moment—did you come down here with Mr. Barstow on his initial trip, at the time of the acquisition of the stock of the Columbia Railroad, Gas and Electric Company?

A. I did not.

Q. Did you have anything to do with making an audit for him at that time, or for any interest which he represented?

A. Very soon after that time.

Q. How soon?

A. I think I came down here first in the latter part of July 1924. I brought with me assistants, and we made a brief examination of the accounts of Columbia Railway, Gas and Electric Company.

Q. At that time what was it called—the General Finance Corporation?

A. Yes, sir.

Q. It had entered into a contract to purchase the stock of Columbia Railway, Gas and Electric Company?

A. So I understood. I don't know that of my own knowledge.

Q. About September of that year they closed that contract, did they not?

A. I think it was in September.

Q. You were Auditor for General Finance Corporation?

A. No, sir.

Q. Did you have anything to do in connection with your auditing work with the price paid, or did it come to your knowledge the price paid by General Finance Corporation [fol. 727] or W. S. Barstow and his associates, by whatever name they might have been known, for the stock of Columbia Railway, Gas and Electric Company?

A. I don't know what they paid for it.

Q. All of that stock was subsequently acquired by the Broad River Power Company?

A. Not all of it.

Q. The common stock was?

A. Yes.

Q. All of Barstow and his interests stock was acquired by Broad River Power Company?

A. Yes.

Q. Did the books of the Broad River Power Company show how much the Broad River Power Company paid Barstow and his associates for the stock?

A. Yes.

Q. How much?

A. It is represented by securities issued to them.

Q. What was the value of the securities?

A. Par value of the securities, Three Million One Hundred Ninety-five Tnousand Three Hundred ($3,195,300.00)

Dollars. In addition Sixty-six Thousand One Hundred One and 64/100 ($66,101.64) in cash.

Q. That is what Broad River Power Company paid to General Finance Corporation or W. S. Barstow and his associates?

A. Yes, sir.

Q. Is there any record anywhere showing what Barstow and Company or General Finance Corporation paid for the stock of Columbia Railway, Gas and Electric Company?

A. Not any of our records.

Mr. Le Pine: We object to that as being irrelevant and immaterial. It has no bearing on the issue in this case.

[fol. 728] Mr. Edmunds: The testimony up to this point shows that all of these properties were owned by the Columbia Railway, Gas and Electric Company; that all of the stock in the Columbia Railway, Gas and Electric Company was acquired by the General Finance Corporation or W. S. Barstow and his associates; that W. S. Barstow and his associates or General Finance Corporation transferred this stock to the Broad River Power Company for a certain price; that the Columbia Railway, Gas and Electric Company conveyed to the Broad River Power Company all of its assets, except the minor property excepted in the deed of conveyance, and I submit it is most material.

The Court: I think what the Columbia Railway, Gas and Electric Company got might be competent.

Q. Do you know of any other records?

A. I know of none.

Q. There is nothing on the books of any of these companies that shows?

A. Just what companies are you referring to?

Q. Any companies that you audit?

A. No, sir; there is not.

Mr. Belser: I want to say this, they are coming into the case on the theory that Broad River Power Company is entitled to a return on their investment. If they paid a million dollars or so to the General Finance Corporation or Mr. Barstow more than was paid to Columbia Railway, Gas and Electric Company stockholders, it bears on the investment of this concern, and I think we are entitled to

know about that as going to show what they regarded as the net value of Columbia Railway, Gas and Electric Company.

Mr. Lyles: Everybody knows that the question of the investment in stocks and bonds of the corporation has got absolutely nothing to do with its relations to the public or its relations to creditors, so long as the rights of credi-
[fol. 729] tors are not impaired with reference to the physical property. It is irrelevant because the question of fair return is not what people paid for the stock. It is the value of the property devoted to the public use.

The Court: It doesn't seem to me that dealing in stocks would have any bearing on it.

Mr. Edmunds: The stock of the corporation is entirely separate and distinct from the assets of the corporation. But where one set of people *set of people* purchase stock in the corporation and then undertake to deal with that corporation as this particular corporation has been dealt with, it seems to me it is competent, especially under the view of what the Columbia Railway, Gas and Electric Comp. ny was worth at the time of the purchase. We know this, t[illegible] people like the General Gas and Electric Company and [illegible] subsidiaries do not come in and buy stocks of companies engaged in public utilities without some basis for the value of that stock. It affords some evidence of the value of the property at that time.

The Court: This witness doesn't seem to be able to give the information. You have a right to ask the question. At the present time it doesn't seem to me to be competent. You can go into what Columbia Railway, Gas and Electric Company got.

Q. Do the books of Broad River Power Company, or Columbia Railway, Gas and Electric Company show how much outstanding stock there was at the time of the sale of that stock to Barstow and his associates?

A. Is that Columbia Railway, Gas and Electric Company's stock you refer to?

Q. Yes, sir; I am referring to it at the time Mr. Barstow and his associates purchased the outstanding stock of the Columbia Railway, Gas and Electric Company?

A. Yes, the books of Columbia Railway, Gas and Electric
[fol. 730] Company show that.

Q. That stock all went finally into Broad River Power Company?

A. All of the common stock.

Q. How much of that common stock was retired?

A. I can't give you that from memory just the amount.

Q. Don't your balance sheet show how much stock is still outstanding of the Columbia Railway, Gas and Electric Company?

A. Yes, sir.

Q. Can't you tell us from that?

A. If I had the balance sheet here.

Q. Maybe you can find it like that other one?

A. The balance sheet shows outstanding as of April 30th, 1928, forty-three thousand three hundred (43,300) preferred stock and twenty-one thousand seven hundred (21,700) common stock.

Q. How many shares does that represent of preferred and common?

A. Four Hundred thirty-three shares of preferred and Two Hundred Seventeen of common.

Q. What was the original number of shares of the common stock at the time of the purchase by Barstow and his associates and up to the time that reduction was made to Two Hundred Seventeen (217)?

A. Twenty Thousand shares of common, and Eight Thousand Nine Hundred Fifty-three shares of preferred.

Q. Nineteen thousand seven hundred eighty-three (19,783) shares of common stock were retired?

A. Whatever the difference is.

Q. As an auditor, in auditing the books do you take into consideration the outstanding capital stock of a corporation in fixing up a balance sheet?

[fol. 731] A. In preparing a balance sheet you must take into consideration the outstanding stock.

Q. When was that stock retired?

A. At the time of the transfer of the Electric and Gas properties it was agreed to be surrendered at the time it was recorded on the books of this company. Whether the physical surrender of that stock has been made to this date, I don't know.

Q. The Broad River Power Company only carries two hundred seventeen (217) shares?

A. That is right.

Q. That is set forth as being all of the common stock?

A. Yes.

Q. Did you investigate by what authority—whether or not the Broad River Power Company or Columbia Railway, Gas and Electric Company followed the statute of this state in reducing its capital stock by nineteen thousand seven hundred eighty-three (19,783) shares?

A. I did not.

Q. You don't regard that as one of your duties?

A. I am not a lawyer. I record only the facts that are presented.

Q. You don't regard it as one of your duties, as an auditor, to inquire by what authority and whether or not that reduction has been made in accordance with the law?

A. That question can hardly be answered by me generally. It depends to some extent from what source I receive the information.

Q. Did you receive any information with regard to this?

A. I did.

Q. Did you receive information that the statute law of this State had been followed in reducing the capital stock by nineteen thousand seven hundred eighty-three (19,783) shares?

[fol. 732] A. I did not, and I made no inquiry regarding the statute with respect to it.

Q. Going to the matter of certain expenses of the Columbia Railway, Gas and Electric Company since the acquisition of it by the Broad River Power Company, will you tell us how much the books of the Columbia Railway, Gas and Electric Company showed was expended for power to the Broad River Power Company during the year 1925?

A. I will have to ask you to repeat the question.

Q. How much did the Columbia Railway, Gas and Electric Company pay Broad River Power Company for power during the year 1925?

A. Forty-six Thousand One Hundred Sixty and 80/100 ($46,160.80) Dollars.

Q. What was the rate?

A. I will have to refer to the vouchers to find that.

Q. We would like to know the rate? Did you charge the

Q. What is the rate in 1926?

A. As far as I remember we did.

Q. What is the rate in 1926?

A. The rate paid in January, 1926, was one and a half cents per kilowat hour, and December, 1926, one and a half cents per kilowat hour. The intervening periods I have not checked, but I presume they are the same.

Q. That would make how many kilowat hours consumed in the year, basing it upon the figure that you gave me?

A. A little over three million kilowat hours.

Q. The Broad River Power Company had the Pacific Mills as a customer?

A. I believe so.

Q. What did they charge that company per kilowat hour?

A. I can't tell without referring to the record.

Q. Would you say more or less?

[fol. 733] A. I wouldn't make any statement, because I can refer to the records and get the facts.

Q. Don't you know it was less?

A. No, I don't.

Q. You say the records aren't here?

A. Not of the Broad River Power Company.

Mr. LePine: The rate for Pacific Mills was one and one-tenth cents per kilowat hour.

Q. Did the Columbia Railway, Gas and Electric give its check to the Broad River Power Company for this power bill?

A. Yes, sir.

Q. Check on its bank account?

A. Yes, sir.

Q. Have you one of the checks there?

A. No, sir.

Q. How do you know they gave the check?

A. From the records. I can produce the cancelled check.

Q. You are sure of that?

A. Yes, sir.

Q. It wasn't just a credit?

A. No, sir; these vouchers here are duplicates—that is an exact duplicate of the check.

Q. Will you produce the original checks?

A. For these two vouchers?

Q. Yes, sir, and for the other vouchers paid to the Broad River Power Company for power supplied?

A. Yes, we can produce them.

Q. It will be understood that they will be produced?

A. Yes, sir; for 1925 it will be only from July 1st.

Q. From July 1st, 1925, to the time that the operation of the cars ceased in 1927?

A. The last bill or two may not have been paid. I am not [fol. 734] positive about that.

Q. What were the power charges for the year 1926?

A. Twenty-seven Thousand Five Hundred Four and 60/100 ($27,504.60) Dollars.

Q. That was at the same rate? Would you say the rate varied or stayed the same?

A. It was the 1926 rate I gave you.

Q. Tell us what amount would have had to be paid by the Columbia Railway, Gas and Electric Company to the Broad River Power Company for power in 1925 and 1926, if the rate had been one and one-tenth cents per kilowat hour?

A. Between eighteen and nineteen thousand dollars.

Q. For what period of time?

A. For the year 1926. Basing my statement on the fact that this Twenty-seven Thousand Five Hundred Four and 60/100 ($27,504.60) Dollars represents kilowat hours at one and one-half cents and reducing that to kilowat hours and multiplying that by one and one-tenth cents is something between eighteen and nineteen thousand dollars.

Q. I believe the rate to Pacific Mills is made under a contract with Pacific Mills?

A. I presume so.

Q. In auditing to see whether that was a correct charge, you would refer to the contract?

A. I have not referred to that particular contract.

Q. You didn't know that the contract provided if they used a certain amount of power that the rate should be one and one-tenth cents per kilowat hour?

A. I did not. I am not familiar with the terms of the contract.

Q. How could you audit the books to tell whether that was a correct charge to the Pacific Mills?

[fol. 735] A. I think I have made that clear before. I do not examine every item.

Q. You don't regard that as a substantial item?

A. I would say it is a substantial item.

Q. You made no examination in your audit?

A. No, not with respect to that particular contract. Examinations are made of the contracts and rates by various branches of our office.

Q. Most of that information is gotten from your branch managers or branch auditors?

A. A great deal of the work is done by them.

Q. Do you know how much the Pacific Mills paid you during 1926?

A. I do not, without reference to the books of the Broad River Power Company.

Mr. Edmunds: I want the books of the Broad River Power Company here and I want those questions answered.

Q. What salaries did the Columbia Railway Gas and Electric Company pay during the year 1926?

A. To whom.

Q. To any of its executive officers?

A. I would have to have the payrolls to tell exactly. My recollection is it paid one-third of the salary of Mr. Woodring and the salary of one or two clerks.

Q. You didn't pay your president anything?

A. No, sir.

Q. Who is President of Columbia Railway, Gas and Electric Company

A. I don't know.

Q. You know that he works for nothing?

A. I know we don't pay anybody as President.

[fol. 736] Q. Does the Broad River Power Company pay anybody who is President of Columbia Railway, Gas and Electric Company?

A. Not as such.

Q. What do they pay him for?

A. Pay who?

Q. The President of Columbia Railway, Gas and Electric Company?

A. I believe I just answered that there was no payment made to the President of Broad River Power Company or Columbia Railway, Gas and Electric Company.

Q. What do they pay him for—in what capacity do they pay him?

A. They don't pay the President. They make no payment to the President.

Q. Do you know Mr. F. D. Campbell?

A. Yes, sir.

Q. Isn't he President of Columbia Railway, Gas and Electric Company?

A. I don't know whether he is or not. I told you before that I didn't know, and I don't know now.

Q. Is he on the payroll of Broad River Power Company?

A. Yes, sir.

Q. In what capacity?

A. General Manager.

Q. Have the books come of the Broad River Power Company?

A. Yes, sir.

Q. I will ask you to refer to the ledger of the Broad River Power Company and point out to me where the property conveyed to it by Columbia Railway, Gas and Electric Company, under date of June 15th, 1925, was conveyed to Broad River Power Co.?

A. Page two of the ledger.

Q. Read it out?

[fol. 737] A. Ten Million Three Hundred Eighty-nine Thousand Three Hundred Ten and 32/100 ($10,389,310.32) Dollars.

Q. I notice that is marked July 31st, J-64—what does that refer to?

A. Journal voucher.

Q. Does that journal voucher list the property which was conveyed by Columbia Railway, Gas and Electric Company to Broad River Power Company?

A. Not in any detail at all. This does not include current assets that were transferred that were applicable.

Q. Are there any other items on that book showing the value of any of the properties conveyed by this deed to the Broad River Power Company or is it all included in that item of Ten Million and some odd dollars? I asked you to point out to me on your book the figure which showed the value placed on the property conveyed by Columbia Railway, Gas and Electric Company to the Broad River Power Company, and you pointed out to me an item dated July 31st, 1925, of ten million some hundred thousand dollars, is that correct?

A. Yes, sir.

Q. Is there any other item on that book which supplements that item, or does that item include all the property conveyed by Columbia Railway, Gas and Electric Company to the Broad River Power Company under the deed in evidence?

A. I would have to refer to the deed and see what the detail of the deed is. This covers the physical property alone. (Witness refers to the deed.) Not being a lawyer, I am not yet clear. The only question in my mind arises here:—this figure does not include materials and supplies and accounts receivable and items of that nature that belong to the railway and gas departments. Whether this conveyed those items or not, I am not sure.

[fol. 738] Q. Whether they were conveyed in the deed or not, were they transferred to the Broad River Power Company?

A. Yes, sir.

Q. What do they amount to as shown by the books?

A. The working assets, consisting of materials and supplies, working funds in the hands of employees to be used as working funds, unexpired insurance premiums and items of that nature total Seventy-six Thousand One Hundred One and 77/100 ($76,101.77) Dollars. Those are in several items. I only have a summary.

Q. Is there anything else Broad River Power Company got from Columbia Railway, Gas and Electric Company?

A. They got the accounts receivable.

Q. What did they amount to?

A. Six Hundred Fifty-four Thousand ($654,000.00) Dollars?

Q. Anything else?

A. Sinking funds that were under the bonds.

Q. How much?

A. Three Hundred Four Thousand ($304,000.00) Dollars.

Q. Anything else?

A. The securities owned.

Q. What did they amount to?

A. Represented Two Million, Two Hundred Seventy-eight Thousand ($2,278,000.00) Dollars. I am giving only round figures.

Q. Is that all?

A. That was all.

Q. In addition to the ten million some odd thousand dollars of July 31st, 1925, those additional items went from the Columbia Railway, Gas and Electric Company to the Broad River Power Company?

A. Yes, sir.

Q. What was the outstanding bonded indebtedness of the [fol. 739] Columbia Railway, Gas and Electric Company at the date of the transfer? Not of the Parr Shoals Company. In the communication which is in evidence, dated November 10th, 1924, Mr. Barstow says the bonds of the Columbia Railway, Gas and Electric Company and its subsidiary companies, including Parr Shoals Power Company, now outstanding, aggregate Six Million Two Hundred Nineteen Thousand ($6,219,000.00) Dollars, but I want them separated.

A. The Columbia Railway Company first mortgage bonds was Two Million Nine Hundred Seven Thousand ($2,907,000.00) Dollars, Canal Company bonds Two Hundred Thousand ($200,000.00) Dollars, Columbia Gas Light Company ten year seven per cent. notes Three Hundred Twenty-two Thousand Six Hundred ($322,600.00) Dollars.

Q. What is the total?

A. Three Million Four Hundred Twenty-nine and six Hundred ($3,429,600.00) Dollars.

Q. The books show that property was turned over to the Broad River Power Company amounting to Fourteen Million One Hundred Eighty-one Thousand Three Hundred Fifty-two and 47/100 ($14,181,352.47) Dollars, doesn't it?

A. The total of the figures I gave amounts to that figure, but in the item of securities owned, given as Two Million Two Hundred Seventy-eight Thousand ($2,278,000.00) Dollars, the par value of the common stock of the Parr Shoals Power Company is included in that figure and the stock of the Public Service Company of South Carolina, Twenty-five Thousand ($25,000.00) Dollars, which was immediately written down to One ($1.00) Dollar, because the property of the Parr Shoals Company had been conveyed and the stock represented nothing.

Q. Was the property of Parr Shoals Power Company [fol. 740] conveyed to the Columbia Railway Gas and Electric Company prior to the conveyance to Broad River Power Company?

A. Yes, sir.

Q. Outstanding against that figure of Fourteen Million One hundred Eighty-one Thousand Three Hundred Fifty-two and 47/100 ($14,181,352.47) Dollars were the Canal Bonds, the Notes of the Gas Company, and the first mortgage bonds of the Street Railway Company and the Parr Shoals Bonds?

A. I would rather have you deduct Two Million Two Hundred Seventy-eight Thousand Dollars from the Fourteen million.

Q. I say your books show, according to your testimony on this stand, that the Broad River Power Company received from the Columbia Railway, Gas and Electric Company assets totaling Fourteen Million One Hundred Eighty-one Thousand Three Hundred Fifty-two and 47/100 ($14,181,352.47) Dollars?

A. I have just corrected that figure.

Q. I asked if the books don't show it?

A. That entry reflects it. Other entries reduce that, which the books also show.

Q. I am asking you if your books don't show that you entered upon them as the value of the assets received from the Columbia Railway, Gas and Electric Company on that date Fourteen Million One Hundred Eighty-one Thousand Three Hundred Fifty-two and 47/100 ($14,181,352.47) Dollars?

A. They show that in one place and offset it in another place.

Q. They do show that in one place?

A. They show those figures, but my answer must consider the sum of the entries rather than one entry.

Q. I am asking you about those entries now. I am going to the other side of the ledger now?

A. We cannot get a correct answer unless we do take those into consideration.

[fol. 741] Q. At that date there existed, according to your statement Two Million Nine Hundred Seven Thousand ($2,907,000.00) Dollars of bonds of Columbia Railway, Gas and Electric Company, is that correct?

A. Yes, sir.

Q. Two Hundred Thousand ($200,000.00) Dollars Canal Bonds?

A. Yes, sir.

Q. Three Hundred Twenty-two Thousand Six Hundred ($322,600.00) Dollars of the Gas Company notes?

A. Yes, sir.

Q. Those were all of the obligations of the Columbia Railway, Gas and Electric Company, as of that date?

A. No, sir.

Q. I asked you for them, and you gave them to me?

A. You asked me for the bonded obligations.

Q. What other obligations were there?

A. Current liabilities Nine Hundred Twenty-two Thousand Six Hundred Eleven and 88/100 ($922,611.88) Dollars.

Q. Of what did that consist?

A. I cannot give you the exact details of that. They consisted of accounts payable, accrued taxes, and probably some loans payable or notes.

Q. What else?

A. Accrued interest on bonds. The various items making up the balance sheet.

Q. Those were taken over by the Broad River Power Company?

A. Yes, sir.

Q. What else?

A. Parr Shoals Power Company bonds.

Q. How much?

A. Two Million Seven Hundred One Thousand ($2,701,-[fol. 742] 000.00) Dollars.

Q. What else?

A. That is all.

Q. So then the assets which the Broad River Power Company took from the Columbia Railway Gas and Electric Company, under the terms of this conveyance, exceeded the liabilities Seven Million One Hundred Twenty-eight Thousand One Hundred Forty and 49/100 ($7,128,140.49) Dollars?

A. I haven't that figure, or anything like it.

Q. If you put down Fourteen Million One Hundred Eighty-one Thousand Three Hundred Fifty-two and 47/100 ($14,181,352.47) Dollars and take from it Three Million Four Hundred Twenty-nine Thousand Six Hundred ($3,429,600.00) Dollars, it will leave you Ten Million Seven Hundred Fifty-one Thousand Seven Hundred Fifty-two and 47/100 ($10,751,752.47) Dollars, won't it?

A. If your arithmetic is right, that will do that.

Q. You stated to me that, in addition to that, there was Nine Hundred Twenty-two Thousand Six Hundred and Eleven and 88/100 ($922,611.88) Dollars current liabilities and Two Million Seven Hundred One Thousand ($2,701,000.00) Dollars Parr Shoals Power Company bonds, which total Three Million Six Hundred Twenty-three Thousand Six Hundred Eleven and 88/100 ($3,623,611.88) Dollars. If you take that figure from Ten Million Seven Hundred Fifty-one Thousand Seven Hundred Fifty-two and 49/100 ($10,751,752.47) Dollars, it will leave you Seven Million One Hundred Twenty-eight Thousand One Hundred Forty and 49/100 ($7,128,140.49) Dollars, will it not?

A. Your arithmetic may be right, but you are not taking into consideration the items I mentioned awhile ago, and that does not present a true picture.

Q. I asked you the value of the property entered on the books, the current liabilities and the bonded indebtedness, [fol. 743] both of the Parr Shoals Power Company and of the Columbia Railway, Gas and Electric Company, and I asked you if there was anything else, and you said there was nothing else?

A. In your calculation you haven't taken into consideration my explanation of my answer.

Q. Do you admit that figure correct as a matter of arithmetic?

A. I hav-n't added it up myself. I will add it and probably I can answer you.

Mr. Edmunds: I am asking him a question, and I submit that I am entitled to an answer. The books show the deductions from those figures. If he has any further explanation, he can make it.

The Court: You are entitled to an answer, and he is entitled to make any explanation he wants to.

Mr. Edmunds: I have made a mistake, I think. Mr. King called my attention to it. By including an item in the total which he had on his book, which he said was not properly inclusive.

Witness: The total of the assets referred to by you as some fourteen million dollars should be approximately Eleven Million Four Hundred Thousand ($11,400,000.00) Dollars.

Q. That is done by deducting what?

A. By deducting the Parr Shoals Stock, amounting to Two Million some odd dollars, and the stock of the Public Service Company of South Carolina.

Q. Who acquired that stock?

A. What stock?

Q. The Parr Shoals Stock that you are deducting?

A. The Parr Shoals Power Company stock was acquired primarily by Columbia Railway, Gas and Electric Company.

Q. The Columbia Railway, Gas and Electric Company owned the Parr Shoals stock?

[fol. 744] A. Yes, sir.

Q. Which was conveyed to the Broad River Power Company?

A. Yes, it was conveyed in this entry. Prior to the conveyance the property of the Parr Shoals Power Company had been deeded to the Columbia Railway, Gas and Electric Company, leaving the stock worthless.

Q. Before you deduct the value of the stock, what figure have you there?

A. Thirteen Million Four Hundred Thousand ($13,400,000.00) Dollars, in round figures.

Q. On the other side of the ledger as against these assets you have the bonds of the Columbia Railway, Gas and Electric Company, the Canal Bonds, the Notes of the Gas Company, the Current accounts payable and the bonds of the Parr Shoals Power Company, haven't you?

A. I don't think that question can be answered the way it is put.

Q. When the Columbia Railway, Gas and Electric Company conveyed you this property, amounting to thirteen million some odd thousand dollars, which included some two million dollars of stock of the Parr Shoals Power Company, what were the liabilities of the Columbia Railway, Gas and Electric Company, which the Broad River Power Company took over? Name them?

A. Over Seven Million Dollars. The Columbia Railway, Gas and Electric Company first mortgage bonds, Two Million Nine Hundred Seven Thousand ($2,907,000.00) Dollars, Canal Bonds, Two Hundred Thousand ($200,000.00) Dollars, Parr Shoals Power Company First Mortgage Bonds, Two Million, Seven Hundred One Thousand

($2,701,000.00) Dollars, Columbia Gas Light Company Notes Three Hundred Twenty-two Thousand Six Hundred ($322,600.00) Dollars, and current liabilities Nine Hundred Twenty-two Thousand Six Hundred Eleven and 88/100 ($922,611.88) Dollars, making a total of Seven Million [fol. 745] Fifty-three Thousand Two Hundred Eleven and 88/100 ($7,053,211.88) Dollars.

Q. The difference between Eleven Million Four Hundred Six Thousand Seven Hundred Twenty-three and 43/100 ($11,406,723.43) Dollars and Seven Million Fifty-three Thousand Two Hundred Eleven and 88/100 ($7,053,211.88) Dollars is what?

A. Approximately Four Million Four Hundred Thousand Dollars.

Q. Do the books of the Broad River Power Company show that they paid the Columbia Railway, Gas and Electric Company anything for those assets in money or securities?

A. It certainly does. It shows they issued securities of their own for which they had bought. It shows they had issued securities of their own to obtain the stock which they agreed to surrender to Columbia Railway, Gas and Electric Company.

Q. What stock did they surrender?

A. They agreed to surrender the principal amount of the common stock of Columbia Railway, Gas and Electric Company, and the principal amount of the preferred stock and the preferred stock of the Parr Shoals Power Company.

Q. Will you point out on the books of the Company of the Broad River Power Company where they paid anything to the Columbia Railway, Gas and Electric Company for that Four Million and some odd thousand dollars you have mentioned?

A. I can point out on the books of the Columbia Railway, Gas and Electric Company where they recorded an agreement for the surrender of that stock.

Q. How much was that stock?

A. Eight Thousand Six Hundred Fifty-three shares of preferred and nineteen Thousand Six Hundred Fifty-three shares of common.

Q. That stock was owned by Broad River Power Company?

A. Yes, sir.

[fol. 746] Q. All they did was simply to cancel the stock on the books of the Columbia Railway, Gas and Electric Company?

A. I wouldn't say that is all it did.

Q. What else did it do?

A. Paid some good money to get it.

Q. What good money did they pay in addition to the surrender of that stock?

A. I am speaking of the Broad River Power Company paying money for the stock that it surrendered.

Q. I am taking the date of this deed to be the date of this transfer—what do the books of the other company show passed from the Broad River Power Company to the Columbia Railway, Gas and Electric Company as a consideration for this deed—conveying this property, the value of which you have given us, as shown by the books, other than the surrender of the preferred stock and the common stock in the Columbia Railway, Gas and Electric Company?

A. The Books of the Columbia Railway, Gas and Electric Company show the cancellation of all of the current liabilities they had.

Q. I am speaking of this—you gave me a figure of four million some odd thousand dollars—what consideration passed for that equity of four million some odd thousand dollars which was the value of the assets above the liabilities which you gave me, other than the cancellation of that stock?

A. I can't say that there was any.

Q. Can you say that there was any?

A. I can't say that there was.

Q. Do the books show any?

A. Not to my knowledge.

Q. You have examined the books?

A. Yes, sir.

[fol. 747] Redirect examination.

By Mr. LePine:

Q. Mr. King, I understood you to say that, in addition to this common stock and preferred stock of the Columbia Railway, Gas and Electric Company, which was surrendered, the Broad River Power Company surrendered the

preferred stock of Parr Shoals Power Company, is that correct?

A. That is correct.

Q. What was the fact as to whether or not that stock was guaranteed by Columbia Railway Gas and Electric Company prior to the transfer?

A. The preferred stock was guaranteed by Columbia Railway, Gas and Electric Company.

Mr. Edmunds: If there is any guarantee, we are entitled to the original form of the guarantee to see just to the extent that guarantee went.

Q. You have the preferred stock certificates in the office here?

A. Yes, sir; I think so.

Q. They did surrender the stock of the Parr Shoals Power Company?

A. Yes, sir.

Q. You testified a moment ago that immediately on the entry on these books of Broad River Power Company of a valuation of around two million dollars for the common stock of the Public Service Company of South Carolina and the Parr Shoals Power Company common stock that was reduced to one ($1.00) Dollar. Is that correct?

A. That is correct.

Q. At the time of that transfer from Columbia Railway, Gas and Electric Company to the Broad River Power Company, do you know whether, as a matter of fact, the Parr Shoals Power Company had any property at the time of the transfer of the stock?

[fol. 748] A. They had not. It had previously been deeded to Columbia Railway Gas and Electric Company.

Q. All of the assets had been transferred to the Columbia Railway, Gas and Electric Company, and they conveyed the physical property as well as the stock?

A. That is right.

Q. Was the physical property of the Parr Shoals Power Company included in the figure of ten million some odd dollars on the property conveyed by that deed?

A. Yes, sir.

Q. The stock really represented no assets?

A. That is right.

Q. I show you Exhibit A-10, and will ask you to look at the written statement at the bottom of that Exhibit. I notice that that statement shows operating expenses and taxes One Million Three Hundred Thirty-two Thousand Eight Hundred Sixty-nine and 40/100 ($1,332,869.40) Dollars. Did I understand you to say that that figure did include taxes, or did not?

A. It does include taxes, but there is not any provision for depreciation.

Q. The taxes had been deducted in that figure?

A. Yes, sir.

Q. The term net earnings and the amount shown there shows the difference between the total gross earnings and the operating expenses and taxes, is that correct?

A. Yes.

Q. What does that net earnings—— What do those operating expenses, shown on that balance sheet, represent—the general nature of the expenses?

A. The expenses of operations of the property of Broad River Power Company, the power plants, the sub-stations, distribution lines and gas plants, or office force, insurance and taxes.

[fol. 749] Q. Do they include anything other than out-of-pocket operating expenses?

A. They do not, except taxes on an accrual basis.

Q. I believe you testified that interest on bonds, right below that, had not been taken out?

A. No, sir.

Q. Has anything been taken out for dividends on preferred stock of Broad River Power Company?

A. No.

Q. I believe you testified that no salaries were paid to the executives officers of the Broad River Power Company of Columbia Railway, Gas and Electric Company as such?

A. I think I testified that there was no salary paid to the President.

Q. Were any officials of the company who were not actually on the property paid a salary for their official position?

A. No.

Q. That is true, is it, of all companies in this group of utilities?

A. That is true.

Q. Can you tell us how many companies there are, subsidiary to, or affiliated with, General Gas and Electric Corporation?

A. I would say offhand there are fifty.

Q. Those companies are all actively supervised and the executive management of all the companies is in the hands of a few men?

A. Yes.

Q. It is, or it is not, a fact that those men holding executive offices in these various companies, hold different positions in different corporations?

A. That is a fact.

Q. Of this group?

A. That is a fact.

[fol. 750] Q. So that one man may be president of one subsidiary and hold the office of vice president in another?

A. That is true.

Q. In the practical operation of the properties, do you consult with or report to these officials in their capacity as a particular official of the particular company, or do you report to them as executives, having the supervisory control over the companies?

A. The latter.

Q. Can you tell me by reference to the books of Columbia Railway, Gas and Electric Company how much in the year 1927, 1926 and 1925 was paid for a General Manager or any other official or executive?

A. I can tell that by referring to the payroll. I can give it to you from the statements—the amount that was charged to that expense account.

Q. The amount on that expense account—just give me that. Tell me how much was charged for executive salaries in these years?

A. In the two months ending February 28th, 1927, Three Hundred Sixty-six and 68/100 ($366.68) Dollars, for the year 1926 Twenty-five Hundred Eighty ($2,580.00) Dollars, and for the year 1925, Two Thousand Six Hundred Ninety-eight and 2/100 ($2,698.02) Dollars.

Q. That is entered under what heading on the books of the Company?

A. "Salaries and expenses of General Officers."

Q. Do you know what general officers were included in that figure?

A. A portion of the salary of the General Manager.

Q. Of any other official?

[fol. 751] A. I can't tell you without going to the payrolls.

Q. On this statement, marked Exhibit A-10, which I show you, consisting of a balance sheet, did the figure as to operating expenses and taxes include anything for depreciation on the property of the company?

A. Did not.

Q. What is the usual percentage charged for depreciation on property of this character?

A. I can only testify as to practice. It would be between three and four per cent. of the full value of the property per year.

Q. You have given a statement of the amount of preferred stock outstanding as of December 31st, 1927?

A. Yes, sir.

Recross-examination.

By Mr. Edmunds:

Q. One more question. Do you enter on your books the value of your franchises?

A. No, sir.

Q. As an Auditor, you realize the fact that franchises to conduct these public service companies are regarded as valuable to the companies themselves, do you not?

A. I would answer yes, that they are valuable to the operation of the companies.

Q. In other words, Mr. Barstow, in his letter of November 10th, 1924, which you seem to agree with, and if not, I will ask you to correct me, and which figures seem to likewise agree in the main with your figures, make this statement: "The physical properties of Columbia Railway, Gas and Electric Company, Columbia Gas Light Company and Parr Shoals Power Company were valued as as May 31st, [fol. 752] 1924, by independent engineers at Twelve Million Two Hundred Twenty-seven Thousand ($-2,227,000.00) Dollars, of which only two and a quarter million dollars is represented in Columbia Railway Department. This is ex-

clusive of any franchises or other similar value." None of the figures that you gave me of the property values included the value of any franchise?

A. They did not.

Q. Such franchise rights are recorded as something of value?

A. Recorded by Utility Companies for the purpose of the records. If they were placed on the records they would have to cost something.

Q. None of them are shown?

A. None of them are shown.

Redirect examination:

Q. The value of a utility property depends on what it will earn, doesn't it?

A. To a very great extent—not only a utility company, but any other company.

Q. Taking that into consideration, the value of the franchise to operate the property would depend upon the earning capacity of the property, would it not?

A. Most certainly would.

Recross-examination:

Q. The prospects of increased earnings as the community developed—is that not included in the value of a franchise? Not only what it has earned but the prospects which it faces?

A. Its continuing to earn wouldn't enhance the value so much, unless the earnings would become very much larger.

Q. You don't regard the future development of a territory to use the utility as worth anything?

A. A utility couldn't operate without that franchise and without that right.

[fol. 753] Q. I am asking you in reply to what Mr. LePine asked you, that the franchise depended upon the showing of earnings. I asked you, does it not also depend upon the future prospects of the development of the territory? Isn't that an element to always be considered when a public utility is buying a plant or locating a plant—what its future prospects are?

A. Yes, certainly.

Mr. Edmunds: I don't know whether you offered in evidence those statements or not, that he read from and that we agreed on, and the books themselves.

Mr. LePine: We will have them all marked.

Mr. Edmunds: Do you also consider the Board River Power Company book in evidence?

Mr. LePine: No, sir.

Mr. Belser: Those books show the earnings and expenditures of Columbia Railway, Gas and Electric Company for what years?

Mr. LePine: We have them complete for 1912 to date.

Detailed operating record of Columbia Railway, Gas and Electric Company from 1912 to September, 1924, introduced in evidence and marked Exhibit A-14.

Detailed operating record of Columbia Railway, Gas and Electric Company, from September, 1924, to December 31st, 1925, introduced in evidence and marked Exhibit A-15.

Detailed operating record of Columbia Railway, Gas and Electric Company, from January 1st, 1926, to March 11th, 1927, introduced in evidence and marked Exhibit A-16.

Record of railway receipts by lines from January 28th, 1925, to May 31st, 1926, introduced in evidence and marked Exhibit A-17.

Record of railway receipts by lines from May 31st, 1926, to March 11th, 1927, introduced in evidence and marked Exhibit A-18.

Summary taken from the books of Columbia Railway, Gas and Electric Company, showing receipts and disburse-
[fol. 754] ments of the railway department from 1920 to February, 1927, introduced in evidence and marked Exhibit A-19.

L. F. Pearce sworn.

Direct examination.

By Mr. Lyles:

Q. Mr. Pearce, you are now holding some position with the Columbia Railway, Gas and Electric Company?

A. Yes, sir.

Q. What is your position?

A. Assistant Treasurer and Assistant Secretary.

Q. You hold a position with the Broad River Power Company?

A. Yes, sir.

Q. What is it?

A. Assistant Treasurer and Assistant Secretary.

Q. Is the Columbia Railway Gas and Electric Company still in existence as a corporation?

A. Yes.

Q. Will you please give me a list of the officers of that corporation?

A. F. P. Campbell, President; Lucian H. Ting, Vice President; William Buchsbaum, Vice President; R. D. Jennison, Vice President; F. D. Campbell, General Manager; J. P. Campbell, Treasurer; C. N. Wilson, Secretary, L. F. Pearce, Assistant Treasurer and Assistant Secretary, A. A. Cano, Assistant Treasurer; G. S. Horseford, Assistant Treasurer; G. A. Aronson, Assistant Secretary; J. W. Weisel, Jr., Assistant Treasurer and Assistant Secretary.

Q. I suppose the officers of that corporation changed after the common stock of it was acquired by the Barstow interests?

A. That is correct.

Q. That was in the fall of 1924, I believe?

A. Yes, sir.

[fol. 755] Q. Is the list of officers you have given us and the directors practically the same as have been in office since that change was made in the fall of 1924?

A. Practically the same.

Q. What differences do you recall?

A. The President of the Columbia Railway, Gas and Electric Company now is Mr. Floyd P. Campbell, of Columbia. Mr. W. S. Barstow was President prior to Mr. Floyd P. Campbell coming.

Q. How about the General Manager?

A. Mr. Campbell is the General Manager of the Company.

Q. Who was formerly the General Manager?

A. Mr. F. K. Woodring.

Q. What connection did Mr. Peterman have?

A. He was Vice President of Columbia Railway, Gas and Electric Company. He was succeeded by Mr. Jennison.

Q. Those are changes since the officers were put into office in the fall of 1924?

A. That is correct.

Q. How long prior to the fall of 1924 were you connected with Columbia Railway, Gas and Electric Company as Secretary?

A. I was elected Secretary of Columbia Railway, Gas and Electric Company in 1919.

Q. Did you make any tax returns for the company while you were Secretary?

A. I did.

Q. Up to the time you were also made Assistant Secretary and Assistant Treasurer in the fall of 1924?

A. Yes, sir.

Q. Did you make tax returns for the company after the fall of 1924?

A. I did.

Q. Prior to this deed in June, 1925, which would carry [fol. 756] you up to the return and made in the year 1925, as I understand, you of course returned all of the property in the name of Columbia Railway Gas and Electric Company and the Columbia Gas Light Company?

A. That is correct.

Q. And the Parr Shoals Power Company?

A. Yes, sir.

Mr. Belser: They should be shown by the return.

Mr. Lyles: What I am trying to prove by the witness is what happened afterwards.

Q. After the separation, which took place in June, 1925, after the deed for the electric and Gas properties, when you got to 1926, did you make a return for an ad valorem tax in the name of Columbia Railway, Gas and Electric Company?

A. That is on the first day of January, 1926, for 1925?

Q. Yes, sir; I mean the first of January and last of February, 1926, for 1926?

A. I made a return in the name of Columbia Railway, Gas and Electric Company for the property owned by Columbia Railway, Gas and Electric Company.

Q. Generally, what did it consist of for the year 1926?

A. That return consisted of street cars owned by Columbia Railway, Gas and Electric Company.

Mr. Edmunds: The return is the highest evidence.

Mr. LePine: The return is in evidence.

Mr. Belser: What is the use of going into it?

Mr. Lyles: I have my own reason for doing it.

The Court: I think you can do it, but if that comes into question, the return would be the best evidence.

Q. Have you a letter from the commission assessing that property for the year 1926?

A. I have—it is right there (indicating).

[fol. 757] Q. Did you receive this—is this a communication you received from the Tax Commission, addressed to Columbia Railway, Gas and Electric Company, dated what?

A. October 9th, 1926.

Q. Did you receive that?

A. I did.

Q. As an official communiciation to Columbia Railway, Gas and Electric Company from the Tax Commission?

A. Yes, sir.

Q. Addressed to whom?

A. Columbia Railway, Gas and Electric Company, Columbia, South Carolina.

We want to offer this letter in evidence.

Mr. Edmunds: We object to this as irrelevant and it has no bearing upon any issue raised by the pleadings in this case.

The Court: It will be received subject to objection.

Letter dated October 9th, 1926, from the South Carolina Tax Commission to Columbia Railway, Gas and Electric Company, introduced in evidence and marked Exhibit No. A-20.

Q. That was the assessment for the ad valorem tax?

A. Yes, sir.

Q. Did you receive any communication dated July 9th, 1926, from the Tax Commission, addressed to Columbia Railway, Gas and Electric Company, giving you the assessment on the property of that company for the special license

tax, imposed by Section 84 of an Act passed by the General Assembly in 1926?

A. I did.

Q. Is this it?

A. Yes, sir.

Mr. Edmunds: We make the same objection. We make the same objections to all of these communications.

Letter dated July 9th, 1926, from the South Carolina Tax [fol. 758] Commission to Columbia Railway, Gas and Electric Company, introduced in evidence and marked Exhibit A-21.

Mr. Lyles: I will ask you if you will admit, without bringing Mr. Query, that the Commission assesses all property on an assessment basis of forty-two per cent of its true value?

The Court: I think the Court might take judicial notice of that.

Q. I hand you letter dated May 18th, 1927, which purports to be an official communication from the Tax Commission, relating to the three mill license tax for the year 1927, based on the assessment for the year 1926, addressed to Columbia Railway, Gas and Electric Company. Did you receive that?

A. I did.

Q. Paid the tax on that basis?

A. Yes, sir.

Letter dated May 18th, 1927, from the South Carolina Tax Commission, addressed to Columbia Railway, Gas and Electric Company, introduced in evidence and marked Exhibit A-22.

Q. I hand you letter dated September 26th, 1927, from the South Carolina Tax Commission, addressed to Columbia Railway Gas and Electric Company, and will ask if you received that as an official communiciation in due course?

A. Yes, sir.

Mr. Edmunds: Same objection.

Letter dated September 26th, 1927, from the South Carolina Tax Commission, addressed to Columbia Railway Gas

and Electric Company introduced in evidence and marked Exhibit A-23.

Q. I want you to explain this pen and ink insertion whereby One Hundred Fifty Thousand ($150,000.00) Dollars is in a circle, meaning strike out, and the figures seventy-five Thousand ($75,000.00) Dollars in pen and ink inserted. What does that mean?

[fol. 759] A. It means that we protested this assessment, and I went before the Tax Commission with our protest, and they agreed to cut the assessment in half, making it seventy-five thousand dollars.

Mr. Belser: We object on the same grounds.

Q. Are these Mr. Craig's initials?

A. Yes, sir.

Q. Is he head of the tax commission?

A. He is chief clerk of the Tax Commission.

Cross-examination.

By Mr. Edmunds:

Q. When was Mr. Campbell elected President?

A. I don't know exactly the date, but sometime since the first of this year.

Q. Prior to that time Mr. Barstow was President?

A. That is correct.

Q. Mr. Barstow is President of Broad River Power Company still?

A. Yes, sir.

Q. Has been since its organization?

A. Yes, sir.

Q. You made the returns for the Broad River Power Company to the South Carolina Tax Commission, didn't you?

A. For what year?

Q. For the years since they have been in existence?

A. Yes, sir.

Q. When it came to the property of the Columbia Railway, Gas and Electric Company, you explained to the Tax Commission that the property which formerly was in the hands of the Columbia Railway, Gas and Electric Company

had been transferred to the Broad River Power Company, didn't you?

A. No, sir; I didn't make that statement.

[fol. 760] Q. Prior to your making the returns for the Broad River Power Company and Columbia Railway, Gas and Electric Company, during your employment, up to the time that Broad River Power Company was formed and took over the property of Columbia Railway, Gas and Electric Company, you included all of the properties in the name of Columbia Railway, Gas and Electric Company?

A. I did.

Q. After that time all that had been conveyed to the Broad River Power Company you put in the Broad River Power Company?

A. Yes, sir.

Q. So the State of South Carolina got the returns of the taxes on those properties from the Broad River Power Company?

A. Yes, sir.

Q. Did you have an ad valorem tax for the Broad River Power Company?

A. Yes, sir; I made the returns.

Q. Prior to that time when the Columbia Railway, Gas and Electric Company owned all these properties in its own name, you had returned them all in that name, hadn't you?

A. I returned the Parr Shoals property separately.

Q. Even after the Columbia Railway, Gas and Electric Company acquired that stock?

A. I have always returned the Parr Shoals property separately from Columbia Railway, Gas and Electric Company.

Q. The Columbia Railway, Gas and Electric Company, prior to the organization of the Broad River Power Company, owned all of the power, gas and street railway privileges and franchises, didn't it?

A. That is my understanding.

Q. Don't you know it?

A. Yes, I guess I do.

[fol. 761] Q. You are Secretary of the Company—keep the records?

A. I did at that time.

Q. You are still Assistant Secretary?

A. Yes, sir.

Q. And keep the records?

A. No, sir.

Q. Then at that time you knew they owned them all?

A. Yes, sir.

Q. Have you here the minutes of the Columbia Railway, Gas and Electric Company under which they authorized this transfer to the Broad River Power Company?

A. I have not.

Q. Just brought your own personal memorandum?

A. A memorandum book that I have.

Q. Did you ever own any stock in Columbia Railway, Gas and Electric Company?

A. Yes, sir.

Q. Who bought it?

A. I bought it.

Q. Who bought it from you?

A. I sold it to W. S. Barstow and Company when they bought out all the rest of the stockholders.

Mr. Lyles: I don't think private sales of stock are relevant.

Q. Do you object to saying what you sold it for?

Mr. Lyles: We object to the evidence being brought out.

The Court: I don't see where it is competent.

Mr. Edmunds: I don't know, but I would like to say this, that we don't wish to stop now to argue the question further, but we feel that we can convince your Honor of the relevancy of such testimony, and if so, we would like to have this witness recalled on this matter.

[fol. 762] The Court: Asking this witness personally what he got, I don't think that is competent. If you want to prove what Broad River Power Company paid for the stock, that is all right. What this witness sold his stock for, I don't see where that is relevant.

Q. Did you agree with Mr. Robinson to sell your stock to the Barstow Company?

Mr. Lyles: We object to that being raised in the alios acta.

The Court: I don't see where individual stockholders selling stock would be effected.

Mr. Belser: We think we are entitled to get from this witness or any other witness the circumstances and the time when he sold this stock, who he sold to and the contract to purchase. The contract of the sale of his stock in Columbia Railway, Gas and Electric Company. This is the company that is primarily responsible originally for this obligation to operate the Street Railway Service. We want to prove that they were under obligations to, and did, buy long before any merger act or separation act was passed.

The Court: The contract is between who?

Mr. Edmunds: The report of the Canal Commission, which is in Evidence, shows that Mr. W. S. Barstow and his associates appeared before the Canal Commission, stating they had acquired stock of Columbia Railway, Gas and Electric Company, and they made the proposition that they were the owners. Subsequent to that time they themselves organized Broad River Power Company.

The Court: I don't see it that way.

Mr. Lyles: (Argument.)

The Court: Somebody might have made a good trade and some might have made a bad trade.

[fol. 763] Mr. Belser: (Argument.)

The Court: If this gentleman wants to tell to whom he sold his stock, all right. I don't see the relevancy of that.

Mr. Lyles: We object to his testifying to any personal transactions relating to the stock.

The Court: I don't see where it effects the issue. Of course all you gentlemen know I have to take all the testimony. I am not going to let him tell what he got for it, and I don't see why he should tell to whom he sold it.

Mr. Belser: (Argument.)

Mr. McLain: (Argument.)

Mr. Belser: Do I understand it is conceded by counsel that Broad River Power Company acquired absolutely the stock in Columbia Railway, Gas and Electric Company prior to September, 1924?

Mr. McLain: No; it was in September 1924.

The Court: If he knows when the Broad River Power Company acquired the stock, he can testify to it.

Q. Did you sell your stock to Broad River Power Company? Have it transferred to them?

A. I did not.

Q. When did you transfer your stock to anybody?

Mr. Lyles: We object.

The Court: I don't think that is material. If he can testify when Broad River Power Company acquired his stock, all right.

Q. Do you know when the Broad River Company acquired your stock?

A. I do not.

Q. Do the books show when your stock was transferred to Broad River Power Company?

A. I couldn't tell you. I haven't the books.

[fol. 764] Q. Who was keeping the books at that time?

A. The Secretary in New York was keeping them.

Q. The Columbia Railway, Gas and Electric Company had all of the properties—it owned the power plants and the poles and the wires and all of those assets, didn't it?

A. Yes, sir.

Q. It conducted all the improvements with regard to any of them, didn't it? There was no other company, person or corporation in the picture, was it?

A. Not that I know of.

Q. How long were you connected with them?

A. Have been with Columbia Railway, Gas and Electric Company since 1910—eighteen years.

Redirect examination.

By Mr. Lyles:

Two leases of Columbia Gas Light Company to Columbia Railway, Gas and Electric Company, the first being dated June 30th, 1911, and the second one, between the same two companies, dated May 1st, 1920, both being bound under one cover, introduced in evidence and marked Exhibit A-24.

Q. You spoke of making returns prior to this sale, in

Q. You returned the Parr Shoals property in the name of the Parr Shoals Power Company—did you say that?

A. Yes, sir.

Q. You returned the Parr Shoals property in the name of the Parr Shoals Power Company, and you returned the Columbia Gas Light Company property in the name of Columbia Gas Light Company?

A. Yes, sir.

Q. The Columbia Railway, Gas and Electric Company owned the stock of all these companies?

A. That is my understanding.

Q. You returned the physical property, prior to the [fol. 765] transfer? You returned the gas and electric street railway properties here in this city and its suburbs?

A. Yes, sir.

Recross-examination.

By Mr. Edmunds:

Q. Where is your office?

A. Arcade Building.

Q. What offices have they at the car barn?

A. I have never been in them, but I can tell you what I think. The dispatcher's office is there and the motor department and the Superintendent of the Gas Department, and the man who has charge of the power line, that is the distribution system in and around the city.

Q. That is where the car barn was, where they kept all the cars of Columbia Railway, Gas and Electric Company?

A. No, sir; not in that building.

Q. What building is it in?

A. The brick building that stands in the corner.

Q. The old car barn is in the same situation as it was?

A. Yes, sir.

Q. Got the cars in it?

A. I couldn't tell you. I haven't been there in several years.

Exhibits A-20, A-21 and A22 were taken by Mr. L. F. Pearce, who is to substitute copies therefor, by agreement of counsel for petitioners and respondents.

May 30th, 1928.

Charles M. Tew sworn.

Direct examination.

By Mr. Le Pine:

Q. Mr. Tew, you reside in Columbia?

A. Yes, sir.

Q. As I understand, prior to 1925, you had charge of the books of the Columbia Railway, Gas and Electric Company?

[fol. 766] A. From 1900 to 1924.

Q. You had active supervision of the books?

A. Yes, sir; most of them I kept myself.

Q. What was your title?

A. I was auditor.

Q. I show you a book marked Exhibit A-14, J. W. W., and will ask you if that is the Detail Voucher distribution record of the Columbia Railway, Gas and Electric Company from 1912 to September, 1924?

A. It is the Detail Ledger, as we call it, of the expenses.

Q. You had charge of the keeping of this book as well as the other records of the Company?

A. I did.

Q. Will you state whether or not that book contains an accurate record of the transactions of the company, so far as they relate to the Railway Department of the Columbia Railway, Gas and Electric Company from 1912 to September, 1924?

A. Yes, sir; it does.

Cross-examination.

By Mr. Edmunds:

Q. Mr. Tew, at the end of each year, while you were Auditor, did you make up a statement showing the condition of the Columbia Street Railway, Light and Power Company and Columbia Railway, Light and Power Company?

A. We did.

Q. Does that book contain a copy of those balance sheets?

A. Not of the entire balance sheet, but the expenses. So far as all the expenses are concerned, but not the revenue. That book doesn't contain any revenue.

Q. Where is the book that contains the revenue?

A. That is on the general books of the *b*ompany—the cash books. We had several books of that kind.

[fol. 767] Q. Have you any book that contains the annual statement of the condition of the company, showing the

amount of the capital stock paid in, the other assets of the company, the annual revenue and the liabilities?

A. The general ledger contains all of that, Mr. Edmunds, but we made out reports showing that. They were compiled from the general ledger.

Q. Is that the general ledger to which you refer?

A. No, sir; that is the subsidiary book. That is the detail of the control accounts in the general ledger.

Mr. Le Pine: I supposed that the revenue was in the book. I will produce the books that have the revenue and statements as well.

Redirect examination.

Q. You kept the cash books and the general ledgers of the company?

A. Yes, sir; I kept them myself.

Q. You also made the reports based on those entries?

A. Yes, sir; I did.

Q. Will you state whether the general ledger for the years 1912 to 1924 and the reports which you have mentioned are accurate books of record of the company and accurately state the items which they purport to state?

A. They are and they do.

Recross-examination.

By Mr. Edmunds:

Q. You say you have additional records which show compiled statements?

A. You mean the monthly reports?

Q. No, the annual reports?

A. That is contained in the detailed report each year.

Q. Is that in the General Ledger?

[fol. 768] A. Yes, sir.

Mr. Le Pine: We will produce that book. We want it as well as you.

Q. The Columbia Railway, Gas and Electric Company, as shown by the books and records of that company, was conducting the gas business in the City of Columbia and

its environs, and the street car business and the power business, wasn't it?

A. Yes, sir.

Q. It subsequently acquired all of the stock in the Parr Shoals Power Company, did it not?

A. My impression is that all of the common stock of the Parr Shoals Power Company was issued originally to the Columbia Railway, Gas and Electric Company. It was never sold to the public, but the preferred stock was sold to the public.

Q. Subsequently the Columbia Railway, Gas and Electric Company acquired all of the property of Parr Shoals Power Company?

A. Not during my time. It was always in the name of Parr Shoals Power Company.

Q. You still have a connection with which one of the companies?

A. The Broad River Power Company is the only company with which I am connected now.

Q. Prior to the sale or transfer of all of this property by the Columbia Railway, Gas and Electric Company to the Broad River Power Company, and prior to this statute commonly referred to as the merger or enabling act, you know as a matter of fact that the Columbia Railway, Gas and Electric Company had acquired the property of Parr Shoals Power Company?

A. No, sir; I did not. I have not had anything to do with the books for nearly four years. I don't know what took place.

[fol. 769] Q. From the time you first became connected with the Columbia Railway, Gas and Electric Company, considerable extensions were made in the city of Columbia and around the City of Columbia, were they not?

A. They were, yes, sir.

Q. Both in street railway activities and in its power activities and in its gas activities?

A. Yes, sir.

Q. All of those extensions were financed out of the common fund, were they not?

A. So far as I remember, they were.

Q. They built a big power plant, didn't they?

A. They built a steam plant.

Q. They built that sub-station at the corner of Assembly and Washington Streets?

A. That was built before my time.

Q. They extended the gas mains considerably?

A. Yes, sir; there was one extension—the largest extension of the gas mains was financed by obligations of the Columbia Gas Light Company.

Q. I hold in my hand Exhibit A-11, which is the deed from Columbia Railway, Gas and Electric Company to Broad River Power Company, dated June 15th, 1925, and on page 38, under the head of property owned by Columbia Railway, Gas and Electric Company I notice a conveyance of a lot at the southwest corner of Washington and Assembly Streets generally known as the sub-station lot—what was the nature of that sub-station and what was it used for?

A. It was used to house machinery for the railway and electric lighting systems.

Q. I notice on page 39 a conveyance of a tract or parcel of [fol. 770] land, bounded North by Rice Street, South by Tobacco Street, East by Sumter Street and West by Main Street. Are you acquainted with that piece of property?

A. Yes, sir.

Q. What was it known as?

A. It was generally called the car barn property.

Q. What was that property used for by the Columbia Railway, Gas and Electric Company?

A. To house the street cars and the machine shop. The general store room was also there, and the store room was for all departments.

Q. The machine shop was for the repair of the cars?

A. Repair of the cars, Yes, sir.

Q. It had street car tracks running into it?

A. I think so.

Q. The trolley wires running in there were to carry the cars in?

A. I didn't go there very often, but I think it had.

Q. The cars were housed on that property?

A. They were.

Q. In the barns located there?

A. Yes, sir.

Q. I read from parcel number two, page 39. Now Parcel number 3, which is the western half of a square, bounded

by Plain Street, East by Huger Street, South by Washington Street and West by Williams Street, commonly known as the steam plant, containing two acres. Are you acquainted with that property in a general way?

A. In a general way.

Q. What was that steam plant used for?

A. For the generation of electrical power.

Q. For what purpose?

A. Any purpose, so far as I know.

[fol. 771] Q. Street cars?

A. I am not familiar with that. That is a technical question, and I don't know anything about that.

Q. Do you know when it was built—approximately?

A. No, I don't.

Q. It was built while you were connected with the company?

A. Yes.

Q. Do you know how much that property cost?

A. No, sir; I do not.

Q. Do the books of the company show?

A. I doubt if they do in such shape that you could get at it.

Q. It was paid for out of the general funds of the company?

A. General funds, yes, sir; I think so.

Q. Now, Mr. Tew, parcel number 4 is twenty-eight acres, known as Big Island. Do you know that property?

A. No, sir; I do not.

Q. Do you know when it was bought?

A. No, but I would say it was part of the property that was acquired when the Columbia Canal was acquired. That is just my impression.

Q. It was paid for out of the general funds of the Company?

A. I never did know exactly how that was paid for.

Q. With regard to the subsections in 4, the three acres located east of Big Island. Would you say that is the same situation?

A. Same situation, yes, sir.

Q. Also seventeen acres, same being the northern three islands of a group of four on a plantation of land known as Rising Hope Farm, in the County of Lexington—is that the same situation?

A. Same situation. I don't know anything about those lands.

[fol. 772] Q. Number 5 is the tract lying at the northwestern corner at the intersection of Fifth Avenue and First Street, which is in part co-incident with the Monticello Road in Eau Claire, seventy feet on its northern and southern sides and three hundred feet on its eastern and western sides. Do you remember that property?

A. No, sir; I don't. I have no knowledge of that at all.

Q. Isn't that the place where the pavilion was, at Hyatt Park or Eau Claire?

A. It may be, but I can't say that it is.

Q. If it is that property, that was property also purchased by Columbia Railway, Gas and Electric Company for its general purposes?

A. I presume so, but I have no personal knowledge.

Q. The street car company operated a pavilion and museum place out there in connection with its street car business?

A. They did.

Q. These four acres on Gervais, Lady, Gist and William Streets, parcel number seven, do you know anything about that, and what it was used for?

A. I have no clear idea where that is, Mr. Edmunds.

Q. That is some of the Gause (?) property, isn't it—between Gervais, Gist, Lady and Williams Street-, isn't that part of the Gause (?) property?

A. It may be, but I don't know.

Q. Then four acres bounded by Lady, Washington, Huger and Williams Streets. Isn't that the Gas property?

A. It may be, but I cannot say that it is, because I don't know.

Q. Where was the Gas properties located in a general way?

A. They are on the other side of the Southern Railway, [fol. 773] towards the river.

Q. Along Lady Street and Gervais Street?

A. I think so, yes, sir.

Q. After the acquiring of the Parr Shoals Power Company property, that property was used to generate electricity, was it not?

A. Yes, sir.

Q. That electricity was used for street cars and general purposes?

A. I presume it was, but I have no personal knowledge of that.

Q. Now then, Mr. Tew, with regard to the disbursements made for the salaries of the officers and employees—first we will take the officers of the Columbia Railway, Gas and Electric Company and of the Columbia Street Railway, light and Power Company. They were made out of the general funds, were they not?

A. They were.

Q. About the employees, were they made out of the general fund?

A. Yes, sir.

Q. Charged to the general expenses?

A. No, they were charged to the different expenses that were effected by them. The different expense accounts—the overhead lines, gas mains, and so on.

Q. When we come to the maintenance of poles and the payment for the construction of the poles, how were they paid for?

A. From the general fund.

Q. The poles along the lines where the street railway track ran were used to carry both the trolley wires and the electric light and power wires?

A. I don't know whether they were or not. There might have been separate poles for the two classes of service. I don't know whether they were combined or not.

[fol. 774] Q. How was the charge for the upkeep of those poles made?

A. I don't know that the upkeep of any particular set of poles was kept separate at all. If it was, I didn't know it.

Q. It was just carried in the general account?

A. If the time tickets show that they were railway poles, they were charged to railway expenses. If electric light poles they were charged to electric light expenses.

Q. Suppose they were used by both?

A. I presume they were divided on the time tickets. I don't know about that.

Q. When it came to entering them up on your ledger?

A. There was a sub-account for overhead lines of the railway.

Q. Will you take this ledger and refer to it in any year and show me where the upkeep of the poles was sometimes charged to the railway department and sometimes charged to some other department?

A. The titles of the accounts do not show, and I have forgotten the account numbers. Here it is. There is "operating railways, overhead lines."

Q. Have you got overhead lines for any other department there?

A. Yes, sir; there is the "Electric distribution lines."

Q. Take on Main Street from Gervais Street to Elmwood Avenue, and you have only one set of poles?

A. I suppose so. That is outside of my line entirely.

Q. You are a rather close observer as you go along the way of life?

A. I don't know as I am specially close.

Q. Don't you know that there is only one set of poles along Main Street carrying both the power lines and the lines for electric lights for stores and for the carrying of the trolleys? Wouldn't you say that is correct?

A. I believe that is true.

[fol. 775] Q. When it comes to the repair of those poles or construction of those poles or any work in connection with them, how are those accounts carried and charged on the books?

A. The whole expense was not charged to any one account. It was apportioned between the service that the poles were supposed to render.

Q. Can you show me that on the book?

A. No, sir; I couldn't do that.

Q. Why is it you are unable to do it?

A. Because it has been so long that I have forgotten just what the overhead lines supplied all over the City. They were not separated at all according to location.

Q. Suppose you had to put in a new pole—what would you charge it to?

A. Whatever the foreman said charge it to.

Mr. Edmunds: We understand his ledger and those annual statements are going to be produced.

Mr. LePine: We want an understanding about the same thing. In order not to inconvenience Mr. Tew, I would like to have it understood now that we will produce the

ledgers, cash books and reports to which Mr. Tew has referred, if counsel on the other side will take my word for it that they are the ledger, cash books and reports, without recalling him.

Mr. Belser: We want to ask Mr. Tew about the statements for those years.

Mr. Edmunds: After inspecting them, if we want to ask Mr. Tew any further questions, we would like to have the right to recall him.

Mr. LePine: We will recall Mr. Tew later if they want to examine him further with reference to anything disclosed by those books and records.

Redirect examination.

[fol. 776] By Mr. LePine:

Q. Mr. Tew, you have the accounts of the different departments, the railway, gas and electric departments of the Columbia Railway, Gas and Electric Company separately, do you?

A. Yes, sir.

Q. When an employee went out to repair a line or do any work in the nature of repairs, what kind of a report or ticket did he turn in to your office after doing the work, as a basis for the charge?

A. He made out his time slip, which his foreman O. K'd, and on it was put the distribution of the charge.

Q. That is whether railway, electric or gas?

A. Yes, sir.

Q. That was the basis of your charge on the books?

A. Yes, sir; I made the charge in accordance with that.

Q. The salaries of the superintendents, managers and executives were handled in the same way, were they?

A. They were apportioned, as I remember, upon the basis of the gross earnings of the previous year among the different departments.

Q. They so appear on the books?

A. Yes, sir.

Q. I don't know whether it came under your duties or not—Do you know in what corporation the title to the gas property was during the time you were auditor? Who owned the gas mains and gas distribution systems?

A. The Columbia Gas Light Company.

Q. The Columbia Railway, Gas and Electric Company operated those under a lease?

A. Yes, sir.

Q. You have testified here as to certain properties purchased and I will ask you first; were you familiar with the [fol. 777] fact that Columbia Railway, Gas and Electric Company had a mortgage covering its property?

A. Yes, sir; I knew that.

Q. From time to time bonds were withdrawn from the trustee of the mortgage and sold?

A. Yes, sir; they were.

Q. What was the basis, or how did you withdraw bonds from the trustee under that mortgage?

A. I don't know; that wasn't done by me.

Q. You have spoken, on your cross examination, about property being paid for out of general funds?

A. Sometimes it was paid for by the issue of bonds, of course.

Q. How did you obtain the funds with which you paid for improvements or purchases?

A. If they were not obtained from the sale of bonds, they were paid by the earnings of the company.

Q. Can you say that any particular pieces that you have testified to here were paid for out of the earnings, or paid for out of the proceeds of the sale of bonds?

A. No, sir; I cannot.

Q. You had nothing to do with the withdrawal of bonds?

A. No, sir; the Treasurer—the Treasury Department handled that.

Q. You are at present employed by the Broad River Power Company?

A. Yes, sir.

Q. Do you devote all of your time to the company, or are you partially retired?

A. I devote all the time my work calls for, which is not very much.

Recross-examination.

By Mr. Edmunds:

Q. Mr. Tew, when the Company sold bonds, that was put [fol. 778] in the general fund, wasn't it? The fund derived

from the sale of bonds?

A. That is my recollection, Mr. Edmunds.

Q. Whenever any improvements, or any piece of property was bought or any building was built, it was paid out of the general funds, whether they came from the income of the property or from the sale of bonds?

A. So far as I remember, that is the case.

Redirect examination.

By Mr. LePine:

Q. I understood you to say that you do not know what was made the basis for the withdrawal of bonds—whether property additions or not?

A. I had nothing to do with that.

Q. Do you know anything about it?

A. I do not.

J. P. CAMPBELL sworn.

Direct examination.

By Mr. LePine:

Q. Mr. Campbell, what business are you engaged in?

A. I am Treasurer of Barstow and Company of New York City and I am also Treasurer of Broad River Power Company.

Q. Are you also Treasurer of Columbia Railway, Gas and Electric Company?

A. I am.

Q. What is the particular nature of the work which you do?

A. As Treasurer of Barstow and Company, my work consists principally in working on the financial reorganization and financing of utility companies.

Q. How long have you been engaged in that work?

A. I have been in utility business itself for sixteen years. [fol. 779] For the past eleven years I have been with Barstow and Company in the particular line of work I have just specified.

Q. In the performance of your duties you deal largely with the question of financing. Do you arrange for the sale

and details of the sale of the securities of the corporation of which you are treasurer?

A. I do.

Q. To what extent have you been engaged, or what experience have you had as to bond financing?

A. The bond financing of the companies in which I acted in that capacity has aggregated about eighty-four million dollars.

Q. You have assisted in arranging for the sale of all bonds?

A. I have. In the altter years I have had complete charge of certain phases of that work.

Q. What particular part of the negotiations or transactions relating to sales of securities do you do?

A. I have participated in the negotiations dealing with the title, security, price to be paid from the standpoint of the company. I have had entire charge of drawing mortgages, issuance of descriptive circulars, listing on the stock exchanges, qualifying on the blue sky statutes of the States.

Q. How long have you been Treasurer of Columbia Railway, Gas and Electric Company?

A. Since the latter part of 1924.

Q. How long have you been Treasurer of the Broad River Power Company?

A. Since about the same time.

Q. The interest with which you are connected took over the control of Columbia Railway, Gas and Electric Company about what time?

A. September, 1924.

[fol. 780] Q. At that time, what mortgages existed against the property of the Columbia Railway, Gas and Electric Company?

A. There was a mortgage dated in 1911, securing initial first mortgage bonds of the company.

Q. Was that the only direct mortgage that had been given by that company?

A. It was.

Q. Do you know what the total authorized issuance of bonds were under that mortgage?

A. Seven and a half million dollars.

Q. How many remained unissued?

A. Deducting Two Hundred Thousand Dollars principal amount, which under the terms of the mortgage was spe-

cifically reserved, Four Million Fifty-seven Thousand ($4,057,000.00) Dollars remained unissued.

Q. Could those bonds be withdrawn to finance extensions to, or betterments to, the property?

Mr. Belser: I don't know what he is going to testify about, but so far as the terms of the mortgage and so forth are concerned, the mortgage itself would be the best evidence. We concede the witness has a right to testify to the indebtedness of the company. The terms and conditions of the mortgage should be proved by the mortgage itself.

Mr. LePine: We have the mortgage here. We are not trying to foreclose the mortgage, in which the provisions are material. That is a collateral matter as to the financial conditions of the company.

Mr. Belser: We think it proper for him to testify about the financial condition of the company.

Q. You have testified that a little over four million dollars of bonds remained unissued. Could those bonds be withdrawn from the trustee and sold to finance betterments to, or extensions to the property?

[fol. 781] A. Within the limitations of the mortgage, they could be so withdrawn.

Q. You are familiar with the earnings of the company for the year ending June, 1924?

A. I am generally familiar with them.

Q. Was there a provision in the mortgage which limited the amount of bonds which could be issued on an earning basis?

A. There was such a provision.

Q. How many bonds could be issued on the basis of earnings—what ratio?

A. The mortgage provided that earnings, as defined in the mortgage, must have been at least twice the interest on the bonds issued and those proposed to be issued. It further provided that, as evidence of compliance with that section, a certificate of a certified public accountant had to be filed, giving the earnings for any period of twelve months within the preceding eighteen months, and we had a certificate made to comply with the terms of the mortgage, and that certificate indicated that Seven Hundred Sixty-Thousand ($760,000.00) Dollars of additional five per cent.

bonds could have been issued against the earnnigs for the year ending June 30th, 1924.

Q. That certificate was the certificate on which any withdrawal bonds was based?

A. Yes, sir.

Q. After the year ending June 30th, 1924, the only bonds that could be withdrawn under that mortgage for financing extensions was Seven Hundred Sixty Thousand ($760,000.00) Dollars?

A. That is correct.

Q. Who was the owner of the gas properties at that time?

A. Columbia Gas Light Company.

[fol. 782] Q. Could funds be obtained under the Columbia Railway, Gas and Light Company mortgage to finance extensions to the Gas property of Columbia, S. C?

A. I believe the mortgage was intended to permit that, but through what appeared to be defective draftmanship, the Trustee interpreted it as barring the issuance of bonds for extensions for property owned by anything but the Columbia Railway, Gas and Electric Company. The Trustee refused to issue any bonds for extensions to the gas property.

Mr. Belser: There are various objections to this line of evidence. It seems to me necessarily hearsay, irrelevant and it is going right much into detail of matters of record. I don't see the relevancy or bearing of it. I therefore object.

The Court: The questions of relevancy will be reserved. The other is all right.

Q. Did the Trustee refuse to issue bonds for gas extension—do you know that?

A. Yes, sir. They did not exactly refuse. They said we would have to file a certificate stating that Columbia Railway, Gas and Electric Company owned the betterments and extensions that were to be made the basis for the issuance of the bonds. Under those conditions we could not comply.

Mr. Belser: We do not concede that this witness has a right to testify who owned it.

Mr. LePine: The document in evidence shows that the whole thing, June 15th, 1925, was owned by Columbia Railway, Gas and Electric Company for one day——

The Court: I think that testimony is competent. That testimony will not be construed by the Court as contradicting any written instrument.

Q. Are you familiar with the program of extent of improvements which were required to be made to the power properties in and around Columbia immediately after [fol. 783] 1924?

A. I am.

Q. What was that program for improvements required by the power situation with reference to the amount of money which was required to do the construction and make the necessary additions?

A. Our inspection showed that there was a great need for additional electric generating facilities in this territory and further showed that, presumably due to the inability of the previous management to finance additions and extensions, they had not pursued a liberal policy in making betterments, even though they would have a good return on the amount involved. Our immediate program involved the expenditure of about five million dollars. The new station at Parr Shoals cost about four million. The total expenditures made in the territory by the Broad River Power Company from the time our interests came into the situation until the present time is approximately ten million dollars.

Q. Were those extensions, improvements and betterments planned at that time?

A. The general program was very carefully planned at that time.

Mr. Belser: I object to the relevancy of that, and the statements are more or less of a hearsay nature.

Q. What are the conditions which confronted Columbia Railway, Gas and Electric Company in the fall of 1924 and 1925, prior to June 15th, as to financing these properties, extensions and improvements?

A. The only financing vehicle the company had was the mortgage of July 1st, 1911. Assuming that all of the other conditions of the mortgage could have been met, it would

have permitted the issuance of only Four Million Fifty-seven Thousand Dollars of bonds. Those bonds would [fol. 784] have matured in 1936, dating from September, 1924. They would have had less than twelve years unexpired life, and obviously the amount of bonds available would not go anywhere in taking care of the projects we had planned.

Q. You stated that the total amount of Four Million Dollars could not have been withdrawn, even for improvements that cost ten millions on the earnings?

A. Not on the earnings at that time.

Q. It limited it to about Seven Hundred Sixty Thousand ($760,000.00) Dollars?

A. Seven Hundred Sixty Thousand Dollars, yes, sir.

Q. Could you have sold the bonds at par, and, if not, what were the market conditions as to the sale?

Mr. Belser: I don't know as it makes much difference, but we submit, however, that the plans and programs and limitations that these people had about selling their bonds and the rest of it could have no bearing on Columbia Railway, Gas and Electric Company to operate the street cars. It seems we are going very far afield.

Mr. LePine: Our position is we have introduced testimony which shows and will be supported by further testimony that, as a condition of the Canal Settlement, Columbia Railway, Gas and Electric Company and the Barstow interests were required to contract with the State of South Carolina to make large expenditures and additions to power facilities in this section of the State and in the State, and that that program to which they had agreed by contract required an expenditure of approximately ten million dollars. We have also shown that it was agreed, and an act was passed, to enable them to separate the properties and sell the gas and electric properties to a corporation which would be able to do this financing.

[fol. 785] Mr. Belser: The Canal Commission's Report is here in writing and the alleged contract between these people and the State of South Carolina is also here in writing.

Mr. LePine: We have been charged with fraud in this transaction by virtue of this sale, and I believe we would have a right, when charged with fraud, to show all the cir-

cumstances surrounding the transaction, and the motives which moved the parties to do as they did.

The Court: The testimony will be received subject to the questions of relevancy and their other objections. We want to keep the testimony in as narrow a range as reasonably possible.

Witness: They certainly could not have been sold at par. The open market quotation at that time was in the neighborhood of eighty-three, that of course being the price for outside sales and not the price the company might have been able to obtain for sales to bankers for re-sale.

Q. That means that you would have sold a bond which obligated the Company to pay $100.00 for Eighty-three ($83.00) Dollars or less?

A. Yes, sir.

Q. These bonds, I believe you said, had twelve years in which to run?

A. A little less than twelve years.

Q. The short maturity of these bonds which would have thus necessarily been sold at a discount, would have had an effect on the rate of interest which the company really would have been paying over the term, would it not?

A. Yes. The difference between the amount the company was obligated to pay at maturity and the amount the company would realized would have had to have been absorbed over the remaining life of the bonds, which was a month or two short of twelve years.

[fol. 786] Q. What do you say as to the possibility at that time of financing the extensions and betterments which were proposed by an additional mortgage on the property of the Columbia Railway Gas and Electric Company?

A. I believe they could have done that, but I believe it would have been very costly, for the reason that when capital is put in a enterprise to the extent that it has been put in this vicinity it is natural for the company, and it is very essential that the very best type of security be created to raise money, so that it may be provided at a cost to permit the company to render good service and make a return on its investment.

Q. Any mortgage which you would have issued at that time, assuming that you let the existing mortgage stand, would have been a second mortgage?

A. Necessarily.

Q. Would that have effected the market price?

A. Very materially.

Q. What do you say as to the possibility of having financed these improvements by calling for the redemption of the bonds which had been issued under the Columbia Railway, Gas and Electric Company mortgage and then issuing a new first mortgage on the property for an amount which would have been sufficient to do the financing, without the restrictions as to earnings which was contained in the Columbia Railway, Gas and Electric Company mortgage?

A. That would have been extremely costly. The redemption price of the existing bonds was one hundred and five. The market situation seemed to indicate a price of around eighty-three on the public market for those bonds, and bonds sold by the company would have had to be sold for five or six points to allow a profit on the bond, so that would boil [fol. 787] down to retiring an obligation at one hundred and five and replacing it by security that would have sold for seventy-eight or eighty possibly.

Q. Are you familiar with the market conditions from 1924 up to the present time with reference to securities offered by companies having a losing street car department and a gas and electric business as compared with a company having gas and electric properties and no street railway properties?

A. I am generally familiar with that situation.

Q. State what the market conditions with reference to those types of securities in 1924, the public attitude towards them?

A. The public attitude towards traction securities was very unfavorable. It still is unfavorable. The combination companies—that is companies with Gas and Electric and traction departments were not then able and are not today able to finance on as good a basis as companies whose business is confined to gas and electric operations. As to companies of the latter class, there were fairly good market conditions in 1924, and conditions have improved steadily since, so that today there is a very fine market for the sale of securities in those corporations not engaged in the traction business.

Q. When you speak of security, do you mean stocks or bonds?

A. Primarily bonds. Of course, the same situation effected all types of securities.

Q. I believe you said it was in the fall of 1924 that the interests with which you are connected took over the control of Columbia Railway, Gas and Electric Company?

A. That is correct.

Q. Did you at that time make any disclosure—any public disclosure of your intention to sell the gas and electric properties to a different corporation, leaving the Columbia Railway, Gas and Electric Company as the owner of the [fol. 788] street railway business?

A. We did.

Q. What was that disclosure?

A. It took the form of a statement in the descriptive circulars relating to the preferred stock of Broad River Power Company and the new issue of ten year, six and a half per cent bonds of Broad River Power Company. The circular describing the preferred stock was issued, as I recall it, in 1924, and the circular describing the ten year bonds in December, 1924.

Q. Will you please tell us what securities Broad River Power Company has sold to the public since June, 1925, on the gas and electric properties which it owns?

A. Since July 1st, 1925, Broad River Power Company has issued and sold Five Million Four Hundred Seventy Thousand ($5,470,000.00) Dollars, principal amount, of its five per cent first and refunding, Series A, bonds, and Two Million Five Hundred Sixty Thousand Five Hundred ($2,560,500.00) Dollars, par value, of its seven per cent cumulative preferred stock.

Q. That preferred stock is held by the general public, is it?

A. It is.

Q. What has been done with the proceeds of the sale of this preferred stock and bonds?

A. The proceeds have gone generally into the additional facilities for the service of the public, both gas and electric.

Cross-examination.

By Mr. Edmunds:

Q. Did you come to Columbia with Mr. Barstow at the time of the first meeting of the Canal Commission?

A. I did not.

Q. Were you connected with Mr. Barstow and his in-
[fol. 789] terest, or with the General Finance Corporation?

A. In 1924, I was.

Q. At the time that Mr. Barstow came to Columbia to confer with the Canal Commission, interests represented by him, to-wit the General Finance Corporation, had already acquired, had already made a contract for the purchase of the stock of the Columbia Railway Gas and Electric Company, had it not?

A. That is my recollection. I think there was only one conference, and it was after the contract had been made.

Q. That contract was an absolute contract to purchase the stock, was it not?

A. It had at least one clause in it which provided it need not carry out if the franchise situation was such that the companies could not carry out the business for which they were incorporated.

Q. Have you a copy of the contract showing that?

A. No, I have not.

Q. Do you know where one is?

A. Yes, there is one in New York.

Q. It is not in Court?

A. I don't know what is in Court, except my own papers I have here.

Q. With that exception you stated it was a binding contract to purchase the stock?

A. That is my recollection.

Q. That contract was not a contract of the Broad River Power Company with the stockholders of the Columbia Railway, Gas and Electric Company, but was a contract of the General Finance Corporation?

A. Yes, sir.

Q. The Broad River Power Company had not been organized, had it?

A. I believe it had. I believe it was organized in July,
[fol. 790] 1924. I am not certain as to the date of the conference.

Q. Was Broad River Power Company organized prior to, or subsequent to the contract between General Finance Corporation and the Columbia Railway, Gas and Electric Company, or subsequent to that contract?

A. I do not have the exact dates in mind, but I think it was about the same time.

Q. Wouldn't you say it was sometime subsequent?

A. It probably was.

Q. The stock of the Columbia Railway, Gas and Electric Company—did it go first into the hands of the General Finance Corporation, or did the General Finance Corporation assign its rights to the Broad River Power Company?

A. It didn't take either of those courses.

Q. What course did it take?

A. The General Finance Corporation assigned the contract to General Gas and Electric Company.

Q. Which is the parent corporation of the Broad River Power Company and General Finance Corporation and the present Columbia Railway Gas and Electric Company are subsidiaries?

A. That is true as to Broad River Power Company and the Gas Company. Columbia Railway, Gas and Electric Company is more a subsidiary of Broad River Power Company.

Q. So that the stock was purchased by General Gas and Electric Company—the stock of the Columbia Railway, Gas and Electric Company?

A. That is correct.

Q. Then transferred from General Gas and Electric Company to Broad River Power Company?

A. Yes.

Q. What was the capital stock of Broad River Power Company?

A. Prior to that time?

[fol. 791] Q. No, its original capital stock?

A. It was originally incorporated for seven shares of stock and at the time of the transfer of the stock of Columbia Railway, Gas and Electric Company the preferred stock of Parr Shoals Power Company to Broad River Power Company, which I think was in the latter part of 1924, sufficient additional stock was issued to bring the capitalization up to Twelve Thousand Five Hundred (12,500) shares of preferred stock and Twenty-two thousand (22,000) shares of common stock.

Q. Was any additional capital stock paid into the Broad River Power Company except the capital stock of the Columbia Railway, Gas and Electric Company?

A. Do you mean were any additional payments made for the capital stock of Broad River Power Company?

Q. Yes, sir; how was the capital stock of the Broad River Power Company made up?

A. At that time there was cash to the extent of Four Hundred Forty-nine Thousand ($449,000.00) Dollars paid in, at the same time of the transaction to which I referred.

Q. The rest represented the capital stock of the Columbia Railway Gas and Electric Company?

A. And the preferred stock of Parr Shoals Power Company, limited to the stock outstanding at that time. There have been transactions since.

Q. You say there have been transactions since? The capital stock of Broad River Power Company has been increased?

A. Yes, sir.

Q. By how much?

A. The present preferred stock of Broad River Power Company amounts to Three Million Eight Hundred Ten Thousand Five Hundred ($3,810,500.00) Dollars, and the present common stock of Broad River Power Company [fol. 792] amounts to Four Million Three Hundred Twenty-nine Thousand Four Hundred ($4,329,400.00) Dollars.

Q. How much of that represents the capital stock of the Columbia Railway, Gas and Electric Company?

A. I cannot very well separate that from the Parr Shoals Company. It was all one transaction.

Q. Of Parr Shoals and Columbia Railway, Gas and Electric Company?

A. Twelve Thousand Five Hundred (12,500) shares of preferred stock and twenty-one thousand nine hundred ninety-three (21,993) shares of common stock.

Q. Give us that in dollars instead of shares?

A. One Million two hundred fifty Thousand ($1,250,000.00) Dollars of preferred stock, and two million one hundred ninety-nine Thousand Three Hundred ($2,199,300.00) Dollars of common stock represented the common stock and the preferred stock of Columbia Railway, Gas and Elec-

tric Company sold by General Gas Company to the Broad River Power Company, the preferred stock of Parr Shoals Power Company similarly sold, and a cash payment of about Four Hundred Forty-nine Thousand ($449,000.00) Dollars.

Q. How much capital, representing the issuance of shares of stock, has actually been paid into Broad River Power Company for common stock in money?

A. Two Million One Hundred Twenty-nine Thousand Four Hundred ($2,129,400.00) Dollars.

Q. The books of the company show the actual receipt of that money and the banking of it?

A. Yes, sir.

Q. At no discount?

A. No, sir.

Q. What did the Broad River Power Company pay the [fol. 793] General Gas and Electric Company for the stock of the Columbia Railway Gas and Electric Company?

A. The combination of the par value of the Columbia and Parr Shoals Company received by the Broad River Power Company and the cash payment I spoke of, was equal to the par value of the Broad River stock issued.

Q. It was equal to it? Did they pay the General Gas and Electric Company that much money?

A. They issued stock to that extent. There was no money paid.

Q. To whom?

A. General Gas and Electric Corporation.

Q. Who is a stockholder of the Broad River Power Company?

A. Yes, sir.

Q. It represented a transfer from the General Gas and Electric Company of its rights which it had acquired as a stockholder in the Columbia Railway, Gas and Electric Company to the Broad River Power Company for stock in the Broad River Power Company?

A. I wouldn't say transfer of rights. They actually delivered the stocks.

Q. They actually delivered and transferred the stocks?

A. That is right.

Q. What they did was merely to effect a transfer of the stock which the General Gas and Electric Company held

in the Columbia Railway Gas and Electric Company to the Broad River Power Company for stock in Broad River Power Company?

A. That is correct.

Q. What did the General Gas and Electric Company pay for the stock of the Columbia Railway, Gas and Electric Company?

Mr. Lyles: We object to that.

The Court: I don't see where that would offer the slightest light on the case. What they paid for it, I don't [fol. 794] see where it makes any difference one way or the other. The suit is against Broad River Power Company and the Railway Company. What the stockholders might have paid each other, I don't think makes the slightest difference.

Mr. Edmunds: I am not going to insist on the question, after Your Honor finally rules. I don't wish to trespass upon the patience of the Court. I want to say in the beginning that I had no intention of re-asking the question so as to try and avoid Your Honor's ruling. I apprehended there would be an objection. It seemed to me, whether I was correct or not in my view of the matter, it seemed to me—and I wish to explain it, because I don't wish the Court to imagine for a moment that I am trying to get in any incompetent testimony—that, in view of what has been produced, namely the fact that the General Gas and Electric Company, which was the owner of this General Finance Corporation, made a contract for the purchase and by virtue of that contract took over the entire property, etc.—it seems to me it would be competent. (Continues argument.)

The Court: The testimony you brought out up to this time is perfectly competent. You have shown by this witness that the stock of the Railway Company was acquired by the Broad River Power Company, and that they issued their own stock in exchange for that. Bearing on the question of the street railway, they acquired all of the property of the Columbia Railway, Gas and Electric Company. All of that is competent up to this time. Suppose the purpose of the question is to find out that they paid a high price for the stock. What ultimate effect would that have? Suppose

you show they paid a low price for it—what ultimate effect would it have? It seems to me we are getting in a wide [fol. 795] field, which would not effect the question one way or the other. Suppose the Finance Corporation, whatever its name may be, bought the stock at an exceedingly low price—what effect would that have on the obligations of the Company? The property is still there. It may be worth many, many times more than what they paid for it. Suppose they bought the stock for a great deal more than it is worth—what effect would it have?

Mr. Edmunds: Mr. Campbell, what you have stated as being paid in is all that has been paid in as stock of the Broad River Power Company?

A. I thought your question related to the common stock only.

The Court: I do not preclude you going into all the questions along the line you are now examining—as to what money was paid in by the Broad River Power Company.

Witness: The original transaction which I have gone into in some detail involved the issuance of One Million Two Hundred Fifty Thousand ($1,250,000.00) Dollars of Broad River Power Company preferred stock. The present preferred stock of the Broad River Power Company is Three Million Eight Hundred Ten Thousand ($3,810,000.00) Dollars, so that since that original transaction about Two Million Five Hundred Thousand dollars, par value, of additional preferred stock has been issued.

Q. With reference to the preferred stock which the Genrad Gas and Electric Company acquired of Parr Shoals Power Company and the other companies, that was handled in the same way as the Broad River Power Company—it was turned over for Broad River Power Company.

A. Yes. At the time of that transaction, General Gas did not own all of the outstanding stock of the Columbia Company, or all of the preferred stocks of either company, [fol. 796] but in lieu of the delivery of the stocks it did not own, it paid the Broad River Power Company One Hundred ($100.00) Dollars for each undelivered share, and that is part of the figure of Four Hundred Forty-nine Thousand Dollars cash, to which I referred.

Q. You prepared this circular of November 10th, or letter from the President's Office?

A. Yes, I did.

Q. This statement here is correct—"There is now controlled for the purpose of delivery to Broad River Power Company, over ninety-three and 6/10 (93.6) per cent of the total of Columbia Railway, Gas and Electric Company's preferred and common stock and the Parr Shoals Power Company preferred stock?"

A. That is absolutely correct.

Q. It did own at that time over 93.6 per cent of these stocks which I read?

A. I think they owned it. The use of the word "control" might indicate that there were some contracts that had not been carried out, but it had the right to get at least that much.

Q. The issuance of subsequent preferred stock and the sale of it to such persons as could buy it, was for the purpose of developing the property, was it not?

A. Generally, yes, sir.

Q. The issuance of additional bonds—was for that same purpose?

A. Yes, sir. You are including developments and such acquistion of other property, of course.

Q. Yes; I meant for that to be inferred. So the developments that have been made by Broad River Power Company is not by reasons of the Broad River Power Com-
[fol. 797] pany increasing its capital common stock, but by the issuance of preferred stock and of bonds?

A. All three classes have been issued.

Q. You gave me the amount of the additional common stock?

A. Yes.

The Court: What was the basis for the additional common stock?

A. Going by the original transaction it was all issued for $100.00 a share.

Q. That stock was actually subscribed for by the General Gas and Electric Company and the money paid in?

A. As to the common stock, yes, sir.

Q. You say that the investigation conducted by the interests, under whatever name they might be known, showed that there was need for extensions of power in this territory?

A. Yes, sir.

Q. The fact that there was need for power in this territory was an inducement to the General Gas and Electric Company and its subsidiary, Broad River Power Company, to come into this territory?

A. It made it a likely field for the employment of its funds.

Q. So that its capital could be invested, its bonds and preferred stocks issued and a corresponding profit made for the Broad River Power Company and through it to the General Gas and Electric Company and its stockholders?

A. Yes, sir.

Q. You say that a street railway operates as some detriment to the sale of stocks and bonds?

A. A losing street railway department certainly would.

Q. So then it was regarded by the General Gas and Electric Company and Broad River Power Company, as an ad- [fol. 798] vantageous thing to those companies to eliminate the street railway department?

A. No, I wouldn't say that. It was regarded as an essential factor in raising new money for the developments required here to do the financing through some vehicle or some channel which would result in the new money being put into the enterprise giving the best possible lien and not being handicapped by the doing of a street railway business at a loss.

Q. You didn't regard that as a benefit to the General Gas and Broad River Company to eliminate the street railway?

A. If it were operating at a loss, it would have been a benefit.

Q. Did you regard it as advantageous to General Gas and Broad River to eliminate the Railway?

A. Yes, when we found out it couldn't be operated at a profit, we did.

Q. When did you find that out?

A. As I recall the figures, when we came into the situation the street railway department was losing about One

Hundred Fifty Thousand ($150,000.00) Dollars a year. We had hoped that with our management and such economies as we might be able to effect to possibly get it on a self-sustaining basis. We did not have the expectation that it would be a money maker. We tried to make it pay. We hoped we could break even on the situation.

Q. When did you conclude that it would be a benefit to the General Gas and Electric Company and Broad River Power Company to eliminate the street railway from the Broad River Power Company as a corporate unit?

A. From the very beginning. From our first investigation of the situation we had that opinion.

Q. So it was your intention from the time you entered the field to do that thing?

[fol. 799] A. If it were possible to do so.

Q. In order to do so, you planned to take over all of the properties of the Columbia Gas and Electric Company in the name of the Broad River Power Company, except its tracks and cars and trolley lines? Except the street railway business?

A. That was our intention from the beginning.

Q. That was about all there was to be left in the street railway business, wasn't it?

A. Yes, sir.

Q. I believe you said you prepared the circular of November 10th, 1925?

A. 1924.

Q. You stated that you prepared this circular or rather letter, which is addressed to Messrs. Pension Company, etc. of November 10th, 1924, being Exhibit No. 27, J. W. W.? I presume you prepared all of these circulars, did you not?

A. Yes, sir; if they are signed by Mr. Barstow, I prepared them.

Q. Some are addressed to Halsey Stuart Company?

A. Yes, sir.

Q. Are you acquainted with the Journal known as the "Commercial and Financial Chronicle?"

A. Yes.

Q. Does it come to your office?

A. Yes.

Q. I apprehend that wherever there is any advertisement with regard to your particular properties or bonds or

sale of your preferred stock, that you note carefully this advertisement, do you not?

A. We don't publish them. The bond houses publish them.

Q. After they are published and come to your office, you take note of them?

[fol. 800] A. No, we really don't. We preserve the documents we sign, which are our representatives. We don't take copies or follow the use to which they may be put by the bankers.

Q. I don't know whether we understand each other or not. You look over them, don't you?

A. If you are referring to the Chronicle, I personally don't have time to read it. I don't read it.

Q. I want to present to you a copy of the Chronicle, which is Exhibit No. 3-e, which is dated January 3rd, 1925. I want you, in connection with this, to glance at Exhibit No. 28, which contains a letter of Mr. Barstow, addressed to Halsey Stuart Company and others, and you will note that in the letter from Mr. Barstow the net earnings for 1923 are put down at Six Hundred Sixty-one Thousand Five Hundred One and 46/100 ($661,501.46) Dollars, for the year 1923; and for the year 1924, Seven Hundred Fifty-nine Thousand Five Hundred Fifteen and 61/100 ($759,-515.61) Dollars—you note that?

A. Yes, sir.

Q. That is correct?

A. Yes, sir.

Q. In the advertisement in Exhibit 3-e you notice the gross income is Six Hundred Sixty-one Thousand Five Hundred One ($661,501.00) Dollars for the year 1923?

A. Yes, sir.

Q. That is approximately the same, with the exception of forty-six cents?

A. Yes, sir.

Q. That is no material difference?

A. No, sir.

Q. The same thing for the year 1924 Seven Hundred Fifty-nine Thousand Five Hundred Sixteen ($759,516.00) Dollars. There is no material difference there?

[fol. 801] A. That is correct.

Q. In Exhibit No. 27, the statement calls the same thing "Total income" for June 30th, 1924 Seven Hundred Fifty-

nine Thousand Five Hundred Fifteen ($759,515.00) Dollars—that is the same thing, isn't it?

A. Yes, sir.

Q. You call that "total income" in Exhibit No. 27, you call it "net earnings" in Exhibit 28, and the advertisement calls it "gross income"?

A. That is correct.

Q. Now, Mr. Campbell, you notice these figures on page 85 of the Exhibit 3-e of the operating expenses—would you look over those and see whether or not, in view of the fact that the other statement with regard to net income and so forth are correct, those figures are also correct.

A. I happened to be in Court when this matter came up some months ago, and because of that fact I have investigated the situation and am prepared to give an explanation. You have referred to this as an advertisement. I don't believe it is an advertisement. It is a news matter. It was not put in by us. I have no knowledge where the Chronicle got those figures. Lawfully, I presume. They must have been obtained directly or indirectly from our office. Accounting, unfortunately, is not an exact science. Different people have different ideas as to how the particular results of a business should be grouped. In the case we have here, you have here bond circular of Halsey Stuart Company, where it is apparently their practice to call the results of operations, after expenses and maintenance and taxes are deducted, by the term net earnings. The other circular is a circular issued by Pension and Company, and indicates that it is their practice to call the same thing "total income." We simply conform to their usage. The [fol. 802] figures are identical. The statement in the Chronicle, from whatever source they obtained it, does not include as railway department expenses the cost of the electric power used by the railway, and if the operating expenses of the railway department as shown in the Chronicle are increased by the amount of the cost of that power the figures will be in exact agreement.

Q. As I understand you, then the only thing to be added is the power?

A. That is correct.

Q. How much is that power?

A. June 30th, 1923, it was Sixty-one Thousand Two Hundred Seventy-five and 75/100 ($61,275.75) Dollars.

Q. Have you the year ending June 30th, 1924?

A. It was Fifty-nine Thousand Three Hundred Seventy-five and 55/100 ($59,375.55) Dollars.

Q. 1923 was when the Columbia Railway, Gas and Electric Company was operating this entire business and before Barstow and his interest or the Broad River Power Company came into the picture?

A. This is correct.

Q. 1924 was when Columbia Railway, Gas and Electric Company was operating it up to September when the stock was purchased?

A. Yes. There was no change during 1924 in the method of operation, however.

Q. These power figures that you have given us for the year 1923—did you allocate them, or had they been allocated on the books of Columbia Railway, Gas and Electric Company?

A. I had nothing to do with the details. I only have the final reports in the New York Office.

Q. You don't know whether the figure for power was allocated by your office or previously allocated by the office of Columbia Railway, Gas and Electric Company?

[fol. 803] A. The bond circular states that the figures had been certified by independent auditors. As a part of our investigation, we did have an audit made by Haskins and Sells. I presume that the figures were taken from that audit.

Q. You don't know whether they had been allocated on the books of the Columbia Railway, Gas and Electric Company?

A. I don't personally know.

Q. You don't know, whether up to the time that the Barstow interests actually acquired the stock in 1924 they had been so allocated?

A. I don't know. It would have been incorrect if they had not.

Q. Do you know the rate at which the power was charged, if it was charged, in the statement for power which you have given us?

A. Only to the extent of the testimony I heard yesterday. I don't know anything about the details.

Q. If you add that to the expense of the railway department, it would go as a credit to the electrical department, would it not?

A. Yes, sir.

Q. And would increase the total net or gross income by that much?

A. Would increase the gross but not the net.

Q. Some the same thing spoken of as "gross" is spoken of as "net" in these circulars?

A. There is some confusion, but I don't think it is that bad.

Q. It would increase the figures?

A. It would not increase that figure "net earnings." You can't make money doing business with yourself.

Mr. Edmunds: In view of the testimony of this witness with regard to this statement in the Commercial Financial Chronicle of January 3rd, 1925, I re-offer it now in evidence [fol. 804] in connection with his testimony.

Mr. LePine: I object to its relevancy.

The Court: The question of relevancy will be reserved.

Page 85 of the Commercial Financial Chronicle of January 3rd, 1925, introduced in evidence and marked Exhibit A-25.

Q. I want to present to you in one batch Exhibit 3-a, b, c and d, that have similar news articles, and I will ask you to glance over those and see would you make the same general statement?

Mr. Lyles: Your Honor Please, I object to those things. It is an utterly unnecessary and utterly useless complication and addition to the record. I don't think the statement of the witness, when he made a frank admission that he never read the articles, that he didn't know where the information came from, he said he presumed the information came from his office. I don't see why when you cross examine a witness on an irrelevant matter that makes the matter competent. I am having keen fear about the size of the record, and so I object to the introduction of those in the record.

The Court: They are all in as objected testimony, and for that reason I will let you go on, Mr. Edmunds.

Mr. Lyles: It is merely the extracts you had reference to—the table of figures?

Mr. Edmunds: Yes, sir.

Q. Would you glance as rapidly as you can over these and see if you would make the same general statement with regard to these figures in these news articles—the statements with reference to Broad River Power Company, taking any figures that you have and comparing them?

A. I would not make any explanation as to power sold by the electric department to the railway department, because [fol. 805] none of these statements seem to be itemized by departments. As to the other figures, I prefer not to testify to them, unless you give me an opportunity to compare them in detail, because I didn't give this newspaper the information, and it may be typographical errors or mis-statements, and I think I should be allowed to check them in detail.

Q. Have you the figures from which you could make the check or not?

A. I haven't them right at my desk. I can do it in Columbia.

Mr. Edmunds: It is agreeable to me for you to make any announcement you please, either directly or through your counsel as to it. Then we can offer them or not, as we please from that statement.

Q. What do your records show with regard to the payment by Broad River Power Company of any funds to this Bus Company, which was operating in the City of Columbia?

A. Broad River Power Company did not make any payments to the Bus Company to my knowledge.

Q. Did the Columbia Railway, Gas and Electric Company?

A. No, sir.

Q. You didn't pay the Bus Company the sum of Nineteen Thousand ($19,000.00) Dollars?

A. Not to my knowledge.

Q. Did you arrange for the payment of any busses for the Bus Company?

A. No, sir.

Q. To what extent did you take part with the White Company in having credit extended to the Bus Company?

A. I personally had no dealings with the White Company.

Q. Do you know of any of your officers or officials having any?

A. I don't know of it.

[fol. 806] Q. Have you ever heard of it?

A. No, sir.

Q. What dividend has the Broad River Power Company pand to this stockholder, the General Gas and Electric Company?

A. That deals, of course, with the common stock. 1924, nothing, 1925, Nine ($9.00) Dollars per share; 1926, Six and 25/100 ($6.25) per share; 1927, Two ($2.00) Dollars per share; 1928, to date; One and 25/100 ($1.25) per share.

Q. Has it paid dividends on its preferred stock?

A. Dividends at the rate of Seven ($7.00) Dollars per share annually have beem regularly paid since its issuance.

Q. You stated General Gas and Electric Company owned all of the Common stock of the Broad River Power Company?

A. Yes, sir; they do.

Redirect examination.

By Mr. LePine:

Q. Mr. Campbell, you have testified as to the stocks which were transferred by General Gas and Electric Corporation to Broad River Power Company, and the consideration received therefor by the Electric Company. Did that transfer include any of the stock of subsidiaries of Columbia Railway, Gas and Electric Company, and by that I mean stock which was in the Treasury of Columbia Railway, Gas and Electric Company? ?

A. No, no stock that was in the Treasury of Columbia Railway, Gas and Electric Company.

Q. In answer to a question of Mr. Edmunds, you testified, or I understood you to testify that when Columbia Railway, Gas and Electric Company transferred certain of its property to Broad River Power Company there was left to the Street Railway Company the street railway retained the street railway property?

A. Yes.

[fol. 807] Q. What did you mean by the railway property?

A. I meant generally the property that was necessary for the conduct of the street railway business.

Q. Did that include any current assets of the railway department?

A. Yes. If they were applicable to the railway department they were left there.

Q. Subsequent to the transfer of this property, it has been testified that Broad River Power Company loaned certain moneys to Columbia Railway, Gas and Electric Company—can you state whether those advances were made in cash or by check or how?

A. I don't personally know the method, but there has been a total of One Hundred Fifty Thousand Dollars approximately advanced by Broad River Power Company to Columbia Railway, Gas and Electric Company.

Q. You are familiar with the circumstances surrounding these loans?

A. I am.

Q. Why did Broad River Power Company loan money to Columbia Railway, Gas and Electric Company?

A. The street railway operations were still being carried on. The Broad River Power Company was the sole common stockholder of Columbia Railway, Gas and Electric Company. The street railway property had a large potential value, if it could be operated at a profit, and it was the judgment of Broad River Power Company, in view of its investment in the situation, that these advances to the amount of approximately One Hundred Fifty Thousand Dollars were justified in the ordinary way that the parent company quite often makes to a subsidiary company.

Q. There has also been testimony as to the valuation placed on the books of Broad River Power Company on the [fol. 808] property which Columbia Railway, Gas and Electric Company transferred to it on June 15th, 1925. Can you tell me where those figures on which these book entries were made in the Broad River Power Company ledger were obtained?

A. The property was taken over on the Broad River books at precisely the same figures at which that property had been carried on the books of Columbia Railway, Gas and Electric Co.

Q. What did you say was the consideration which Broad River Power Company paid for this property which was conveyed to it by Columbia Railway, Gas and Electric Company on June 15th, 1925?

A. Using the word property to include all the assets?

Q. What property was transferred, electric and gas, physical property and such of the current and other assets as applied to the gas and electric departments?

A. Treating the word "property" as including all of the assets acquired, the consideration for that acquisition by Broad River Power Company consisted of the assumption of the existing Columbia mortgage, under which at that time Two Million Nine Hundred Seven Thousand ($2,907,000.00) Dollars, principal amount, of bonds were outstanding; the assumption of Two Hundred Thousand ($200,000.00) Dollars, principal amount, of bonds known as Columbia Canal Bonds; the assumption of Two Million Seven Hundred One Thousand ($2,701,000.00) Dollars, principal amount, of bonds of Parr Shoals Power Company; the assumption of Three Hundred Twenty-two Thousand Six Hundred ($322,600.00) Dollars, principal amount, of Columbia Gas Light notes; the assumption of current liabilities, accrued liabilities and other items of that same general character, amounting to Nine Hundred Twenty-two Thousand Six Hundred Eleven ($922,611.00) Dollars, and an agreement to surrender for cancellation or retirement stocks of Columbia Railway, Gas and Electric Company and Parr [fol. 809] Shoals Company to the aggregate par value of Three Million One Hundred Twenty-two Thousand Three Hundred ($3,122,300.00) Dollars.

Q. Returning to that consideration, give us the amounts that were set up on the books of Broad River Power Company as the value of the property acquired, which you say was the same figure at which these same assets were carried on the books of Columbia Railway, Gas and Electric Company, prior to the conveyance thereof on June 15th, 1925?

A. First, as to physical property, the figure was Ten Million Four Hundred Fifty Thousand Eight Hundred Forty-one ($10,450,841.00) Dollars, current assets Two Hundred Eighty-four Thousand Seven Hundred Sixty-four ($284,764.00) Dollars, and then a book-keeping item of Six Hundred Thirty-five Thousand Three Hundred Thirty-four

($635,334.00) Dollars, representing the discount on certain of the bond issues assumed—that is, representing that portion of the discount that had not at that time been written off, amounting to Six Hundred Thirty-five Thousand Three Hundred Thirty-four ($635,334.00) Dollars.

Q. This item of Six Hundred Thirty-five Thousand Three Hundred thirty-four ($635,334.00) Dollars, which you have spoken of as discount on bonds which had not been charged off—did that represent any actual tangible item of property or asset?

A. It did not.

Q. It was merely, as I understand it unamortized discount on securities that had been sold less than par?

A. That is correct.

Q. Previous to the time Broad River Power Company acquired the property?

A. Yes, sir.

Recross-examination.

By Mr. Edmunds:

[fol. 810] Q. You heard Mr. King's testimony yesterday, did you not?

A. I heard his testimony from the beginning of the afternoon session. I was not here in the morning.

Q. You were here when I was cross-examining him?

A. Yes, sir.

Q. You heard him give the figures and make the calculations as to the properties which were placed upon the book of the company at the time of that transfer?

A. I did.

Q. They were correct, were they?

A. When he finally got through they were, yes, sir.

Q. You say the stock which was cancelled amount- to how much?

A. The stock that was agreed to be cancelled, Three Million One Hundred Twenty-two Thousand Three Hundred ($3,122,300.00) Dollars, face value.

Q. That was stock which the Broad River Power Company held in the Columbia Railway, Gas and Electric Company?

A. And the Parr Shoals Power Company, yes, sir.

Q. The Parr Shoals stock had been entered up on the books at a dollar?

A. It had been reduced to a dollar because of the conveyance of the property.

Q. Now, then, Mr. Campbell, I neglected to ask you when I asked about dividends, how much was set aside as surplus?

A. I can't answer that offhand. I will have to get statements for that.

Q. Can you give me approximately the surplus to date?

A. Yes, sir; I can give you that. As of April 30th, 1928, which is the most recent accounting period, we have Broad River Power Company surplus Seven Hundred Fifty-three Thousand Six Hundred Sixty-nine and 64/100 ($753,669.-64) Dollars.

Q. That is surplus it has created since its organization? [fol. 811] A. Yes, sir.

Q. Mr. King's statement on yesterday of the difference between the property value and the obligations assumed of Four Million Five Hundred some odd thousand dollars, leaving out of consideration the cancellation of the stock, was correct, wasn't it?

A. I don't know whether he took that discount in or not.

Q. He especially eliminated that. You give me the figure eliminating that?

A. Eliminating the stock agreed to be surrendered and eliminating also the item of discount, I make the figure Three Million Six Hundred Eighty-two Thousand Three Hundred Ninety-four ($3,682,394.00) Dollars.

Q. Frankly, Mr. Campbell, when Mr. LePine was examining you as to the property which was entered up on the books, he didn't take into consideration certain items that Mr. King was examined particularly about. He said the property was entered up at some Ten Million some odd thousand dollars, and that there were other things?

A. I don't recall them now. If I had the stenographer's notes I could possibly give them to you. I think I can help a little there, though. Mr. King was cross-examined as to specific entries, and he gave what each entry disclosed. I believe he took in such items as sinking funds, which

amounted to a substantial amount as an asset, whereas in the figures I have given I have stated the figures net.

Q. You heard his statement about the various items which were placed upon the property account at the time that this transfer took place, and eliminating that, his figures were correct?

A. Yes, sir.

Q. You said that the figures entered upon the books of [fol. 812] the company were the figures as they appeared on the old books of the Columbia Railway, Gas and Electric Company?

A. Yes, sir.

Q. In addition to that, you had independent engineers to fix the value of the property?

A. We had a report made.

Q. In this statement here in the letter of November 10th, 1924, the physical properties of Columbia Railway, Gas and Electric Company, Columbia Gas Light Company and Parr Shoals Power Company were valued as of May 31st, 1924, by independent engineers at a total of Twelve Million Two Hundred Twenty-seven Thousand Dollars, of which only about two and a quarter million dollars is represented in the electric railway department. If you deduct the two and a quarter million as represented by the railway department from the twelve million and some odd thousand dollars, it would give you about the same figure you have?

A. Roughly the same.

Q. Therefore, independent engineers valued the property at about the figures that the property was carried on the books of the Columbia Railway, Gas and Electric Company?

A. That is correct, subject to qualification that the report—I think the report you read from said reproduction cost, all new, admitting that the property was not all new. This statement is correct, but does not disclose the basis other than reproduction cost new. The basis was reproduction cost new.

Q. You were representing the properties to be worth those figures?

A. Based on that report, we were.

Q. What was it you said about three million dollars worth of Parr Shoals bonds being assumed and others in the treasury?

A. My statement in connection with that was made in an effort to reconcile the figures used by Mr. King from the [fol. 813] books with the figures used by Mr. King from the books with the figures I had used. Actually at the date of the conveyance Two Hundred Ninety-nine Thousand Dollsar of Parr Shoals bonds had been acquired by the sinking fund created by the mortgage and were held alive by the trustee. Mr. King, reading from the entries, would take this in as an asset Two Hundred Ninety-nine Thousand Dollars—he would take in as a liability Three Million Dollars worth of bonds, and the net figure would be Two Million Seven Hundred One Thousand ($2,701,000.00) Dollars of bonds, and I used the latter figure.

Redirect examination:

Q. In the deed offered in evidence from Columbia Railway, Gas and Electric Company to the Broad River Power Company there are various properties described as being the same premises conveyed to Columbia Railway, Gas and Electric Company by South Carolina Power Company by deed dated June 15th, 1925, and being the same premises conveyed to Columbia Railway, Gas and Electric Company by Parr Shoals Power Company by deed dated June 15th, 1925, and the same premises conveyed to Columbia Railway, Gas and Electric Company by the Columbia Gas Light Company by deed dated June 15th, 1925, and various other recitals of a similar character of properties conveyed to Columbia Railway, Gas and Electric Company by other corporations by deed dated June 15th, 1925, which is the same date as the deed of Columbia Railway, Gas and Electric Company to Broad River Power Company. In other words it appears from this deed that a number of corporations transferred their property to the Columbia Railway, Gas and Electric Company on June 15th, 1925, and that on the same date Columbia Railway, Gas and Electric Company conveyed those properties to Broad River Power Company. I would like to ask you to explain the purpose and [fol. 814] the reason for the conveyance of the property into Columbia Railway, Gas and Electric Company and out on the same day?

A. The primary reason was, that was the only way it could have been done. The common stock of the Parr Shoals Power Company, the entire common stock was

owned by Columbia Railway Gas and Electric Company. When I used Parr Shoals, it is an illustration—the others are practically the same basis. That stock was subject to the mortgage of Columbia Railway, Gas and Electric Company, under which the American Exchange and Trust Company is Trustee. It was planned to transfer part of the property of Parr Shoals Power Company into Columbia Railway, Gas and Electric Company, surrender all the stock and dissolve the Parr Shoals Power Company. The Trustee of the Columbia Railway, Gas and Electric Company mortgage, quite properly, said they would not permit that conveyance and that dissolution unless the properties were first conveyed to the Columbia Railway, Gas and Electric Company, the reason being of course that, through the subjection of the stock to the mortgage, they had a lien on the equity over the debt, and for that reason the properties that were not owned by Columbia Railway, Gas and Electric Company were first conveyed to Columbia, and then Columbia made a conveyance of the street railway—rather all of the properties except the street railway, and all these other properties which it acquired about the same time.

Q. The purpose of the conveyance in that manner was to subject the property of these various corporations to the Columbia Railway, Gas and Electric Company mortgage as a substitute for the stock of the same corporations, which were in the hands of the trustee as security for the same mortgage?

A. That is correct in general. The stock, I don't believe, [fol. 815] was physically in the hands of the trustee. The mortgage had a clause which subjected it. We had to get transfers to carry the transaction through.

Q. You have testified that Broad River Power Company loaned certain funds to Columbia Railway, Gas and Electric Company after June 15th, 1925. Are you certain as to the amount?

A. I am not. I think I used the word "approximately."

Q. It may have been more or less?

A. Yes, considerably.

Recross-examination.

Q. You don't know how the loans were represented, whether by cash, power or what?

A. It was represented by open account against the company.

Q. You don't know whether they issued any checks or not?

A. I assume they must, but I don't know.

Q. This Three Million some odd thousand dollars of stock that was surrendered—two million was Parr Shoals, was it?

A. No. In the figures I used, I didn't take any credit for the surrender by Broad River Power Company of the Parr Shoals common stock that had been owned by Columbia Railway, Gas and Electric Company, because, taking the property in at its full value, made that stock worth, as the records show, only One Dollar. The stocks I referred to were Columbia common stock, Columbia Preferred stock and Parr Shoals preferred stock only, which Broad River Power Company agreed to surrender.

Q. How much was the Parr Shoals Preferred?

A. Two Hundred Ninety-two Thousand ($292,000.00) Dollars; that is the amount they agreed to surrender.

Q. How much preferred of Columbia Railway, Gas and Electric Company?

A. Eight Hundred Fifty-two Thousand ($852,000.00) [fol. 816] Dollars.

Q. How much common?

A. One Million Nine Hundred Seventy-eight Thousand Three Hundred ($1,978,300.00) Dollars.

Q. What was the original capitalization of the Columbia Railway, Gas and Electric Company at the time of the purchase of its stock by General Gas and Electric Company?

A. Eight Hundred Ninety-five Thousand Three Hundred ($895,300.00) Dollars, par value, common stock Two Million ($2,000,000.00) Dollars.

Q. I asked you to make a check of certain figures, have you done that?

A. Yes, sir.

Q. What do you have to say?

A. They are generally correct as condensed statements of the circulars describing the particular bond issues. There are just about four things I would like to put in. In the issue of September 25th, 1926, there is a statement of capitalization without any date as to the date which that capi-

talization speaks—that date is August 3rd, 1926. In the issue of April 24th, 1926, there is a tabulation showing the growth of business, which is absolutely correct for the years shown, but not complete as to the circular. In that same issue the capitalization is as of March 31st, 1926 and it is not so stated. In the issue of November 15th, 1924, this statement appears: "By building seventy mile transmission line from the new plant at Parr Shoals to the Spartanburg District the company will obtain a very considerable amount of desirable power business which is not now secured," and it goes on to say something about the company operating in and about Spartanburg. That condensation might indicate that we were operating in Spartanburg. In the issue of November 15th, 1924, there is an erroneous ref- [fol. 817] erence to Columbia River Railway Gas and Electric Company. Aside from these particulars and the general use of abbreviations the articles are correct.

Mr. Edmunds: We would like to offer these articles under the same number of exhibits they bear.

The Court: They will be accepted subject to objection.

Q. You stated that the dividend for 1924, I believe, was Nine ($9.00) Dollars a share?

A: '25. None in '24.

Q. On the common stock?

A. That is correct.

Q. Would you give us that in figures?

A. One Hundred Ninety-eight Thousand ($198,000.00) Dollars.

Q. That same year you paid seven per cent. on your preferred?

A. Yes, sir.

Q. That was how much in figures?

A. I don't know that I have that here. Maybe I can get it. I havn't those available, but I can get them possibly before I leave. Do you want it for the other years?

Q. Yes, sir.

Mr. LePine: We would be glad to furnish a statement, if you will tell us what you want.

Mr. Edmunds: The total amount of money paid out in dividends on common and preferred stock for 1926, 1927 and 1928.

Mr. LePine: We will produce that, subject to the other objections.

Q. You told me you didn't have the years that the surplus was set aside, in the various amounts?

A. That is correct.

Redirect examination:

Q. I show you the issue of the Commercial and Financial [fol. 818] Chronicle of January 3rd, 1925, and ask you if you have any further explanation to offer as to the discrepancy between those figures and the statement of operating receipts and disbursements?

A. In my testimony this morning I said by adding to the railway expenses certain figures which I gave for power used by the railway department that adjustment would bring the Chronicle figures in agreement with our records. During the noon recess my attention was called to the fact that my statement was incorrect. I find, in addition to making the adjustment for power used by the railway department, the figures used in the Chronicle had a single figure for taxes, and to bring the departmental figures in agreement with our items of Nineteen Thousand Two Hundred Eighty-nine and 52/100 ($19,289.52) Dollars for the year ended June 30th, 1924, and Sixteen Thousand Seven Hundred Thirty-nine and 04/100 ($16,739.04) Dollars for the year ended June 30th, 1923, should be added to the railway department expenses and taxes.

Q. Making that addition makes the expenses for power which you spoke of as an inter-departmental transaction lower than that amount?

A. The figures I used for power were correct.

Q. These items are also to be taken into consideration to make the figures agree?

A. Yes, sir.

Recross-examination:

Q. Has your surplus largely increased during the last year or two, or was most of it set aside one year?

A. I think it was gradually built up.

Q. By setting aside the same amount?

A. I wouldn't want to approximate that. I have given you the dividends and whatever the earnings were above that was set aside.

[fol. 819] EARNEST W. NIVER sworn.

Direct examination.

By Mr. LePine:

Q. Mr. Niver, with what company are you connected?

A. Vice President of Halsey Stuart Company.

Q. In what business is that company engaged?

A. Investment, banking business. It has its principal offices in New York, Chicago, Boston, Philadelphia, Detroit and Milwaukee. Our business is confined strictly for purchases of bonds. We do not deal in any stocks, neither preferred nor common.

Q. How long have you been in that business?

A. About seventeen years.

Q. How long have you been engaged with Halsey Stuart Company?

A. About eleven years.

Q. Will you give us some idea as to the amount, in dollars, of bonds and other securities which are purchased by your house in the course of the year?

A. I will have to go over the figures that were published in the Wall Street Journal, as I haven't any complete record.

Q. In a general way is all I want?

A. In 1926 we purchased and participated in approximately Seven Hundred Nine Million Dollars, principal amount of securities. In 1927 approximately Seven Hundred Ninety Million, and for the first quarter of this year approximately three hundred million dollars.

Q. These securities are purchased by your company with the idea of re-selling some to the public, and are subsequently resold?

A. Yes, sir; to our customers and also dealers. We naturally make a wholesale offering as well as a retail offering.

Q. You make the purchase and make the sale to anyone who wants to purchase?

—. ——.

[fol. 820] Q. During the last few years, has the Halsey Stuart Company purchased securities of Broad River Power Company?

A. Yes, sir.

Q. You have been familiar with the negotiations for the purchase of these securities and for the sale of the securities?

A. I have from the very start of the organization of the company.

Q. You were familiar with the financial condition in a general way of Columbia Railway, Gas and Electric Company in the fall of 1924? Or when did you first become familiar with the affairs of that company?

A. I think the first I heard of the company and when I became acquainted with some of its affairs was in the early part of 1924, but it was along in the summer or early fall before we took any keen interest in the situation leading up to any prospective financing.

Q. Did you ever have an occasion to examine the mortgage of Columbia Railway, Gas and Electric Company to ascertain its provisions as to the sale of securities under that mortgage?

A. I can't say that I have ever examined the mortgage carefully. I know in a general way what the authorized amount was and the unissued amount of bonds.

Q. You also were acquainted, I suppose at that time, with the program of the interests of persons interested in Columbia Railway, Gas and Electric Company for future additions and improvements and extensions to the electric properties in and around Columbia?

A. Yes; I have had several conversations with the Barstow people in that regard.

Q. You took part in the conferences or negotiations where the question of financing these extensions and betterments was discussed?

[fol. 821] A. Yes, sir.

Q. Do you know in a general way about how much financing was contemplated at that time over the course of the next few years in connection with extensions, betterments and improvements?

Mr. Edmunds: In order to avoid subsequent objections, we would like to enter a general objection to the relevancy of this testimony.

Mr. LePine: That is agreeable to us.

Witness: As near as I can recall at the moment, it seems to me it involves somewheres between five and seven millions of dollars.

Q. Did you ever form any opinion at that time, and have you any opinion as to the feasibility as to financing those improvements under the existing mortgage of Columbia Railway, Gas and Electric Company?

A. Yes, I formed an opinion at that time.

Q. State what it was?

A. As a result of our several meetings with the Barstow people, familiarizing ourselves to some extent, with the conditions that existed here, and as a result of that we were of opinion that it was an impractical thing for the company to try and finance its power additions through the sale of any additional bonds under the Columbia mortgage. One of the reasons for arriving at that conclusion was that the mortgage was what we would refer to as an old-fashioned mortgage. There was involved as partial security the street railway, which the public was very much opposed to. The majority of the bonds was of very short duration, and we thought that the best results of the whole situation could be obtained by the creation of a mortgage that would permit these improvement to be made in large amounts from time to time. There may have been some other factors there that I don't recall at the moment, but [fol. 822] they may come to me as we proceed.

Q. You were familiar with the restrictions as to the issuance of bonds as limited by the earnings, were you not, at that time?

A. Two for one earning restriction.

Q. Did that provision also restrict the bonds that could be issued much smaller than the four million unissued bonds, based on the past?

A. The mortgage restricted the issuance of bonds smaller than the four million.

Q. Could you tell about the number that could be issued?

A. It seems to me it was less than a million.

Q. Under the Columbia Railway, Gas and Electric Company mortgage the bonds that could be sold at that time was restricted to a sum under one million dollars?

A. Yes, sir.

Q. What was, and is, your opinion as to the market ability of an issue of bonds under a mortgage given subject to the existing mortgage? In other words, would it have been possible for Columbia Railway, Gas and Electric Company to have financed these extensions with the mortgage that it had at that time outstanding on any favorable terms, and, if so, or if not, explain why?

A. It wouldn't have been possible to finance them through us, and I doubt very much whether the bonds would have been salable for the reason that when that mortgage was closed, and it would have been closed at the time they exhausted the four million dollars, any additional mortgage would have been in effect a second lien on all of the new property, as the mortgage had a hereafter acquired clause in it.

Q. You were familiar with the market conditions in 1924 and 1925 as effecting the sale of bonds of a company having a railway, gas and electric department, and the company having merely a gas and electric department, are you [fol. 823] not?

A. Yes, sir; I am familiar with the market conditions of companies engaged in electric and gas business and in the gas, electric and street railway business, and street railway alone.

Q. State what the conditions were in 1924-25 and since that time with reference to marketability?

A. In 1924 five per cent bond issues in gas and electric corporations were selling from ten to twelve points lower than present prices. With corporations with a street railway involved, approximately fifteen points below present prices. In cases where there was a street railway alone, in many instances bonds were selling as low as sixty points.

Q. Of course, the price would be effected to some extent as to whether operating at a profit or loss?

A. It would.

Q. It was unfavorable where there was a street railway, in any event?

A. Yes, sir.

Q. State in a general way as to the feasibility in 1924 and 1925 of calling for redemption the Columbia Railway, Gas and Electric Company bonds, and then issuing a new first mortgage on the combined electric, gas and street railway

property—covering the new additions as well as the old property?

A. That operation would have resulted in the company paying a premium on the call of the bonds. With that bond issue out of the way and other bond issues, the probabilities are that a mortgage could have been created, but even so, the security would have had to have constituted not only the electric and gas, but the street railway as well. That in my opinion very materially effects the salability of the issue.

Q. It would have been an expensive financial program to have done that?

[fol. 824] A. Very expensive. The company couldn't have realized as high a price for the securities as it could have in creating a new corporation—one created to develop the power alone.

Q. Do you know what the market price of Columbia Railway, Gas and Electric Company bonds was in 1924 and 1925?

A. I have some figures here. I don't know whether they cover all of '25 or not. The market on Columbia Railway, Gas and Electric Company 5's, June, 1924, was eighty-three bid—for how many bonds, I do not know, but I think that was for a nominal amount of bonds. I haven't the figures for 1925.

Q. Can you tell us in a general way what the market price of bonds would have been under market conditions in 1925?

A. I think the general trend would have been a slight improvement in the market for the bonds.

Q. About how many points?

A. That would be a rough guess on my part. It would be somewhere around five points.

Q. At what figure could new bonds have been sold to the public—five per cent bond in 1924 and 1925—including the street railway, electric and gas property—would there have been any variation in that and what the old issue was selling?

A. There might have been a difference of not more than two points.

Q. So if the Columbia Railway, Gas and Electric Company bonds had been redeemed at a premium, it would have

been necessary to have sold the new issue at what price, compared to that at which the old bonds were selling?

A. Two points above the market for the old. The price the company would have received would have been something off the list to cover the commission brokers and a profit to the bankers.

Q. Your company participated in the purchase, I believe, of the ten year bonds of the Broad River Power Company? [fol. 825] A. Yes, sir; we did.

Q. Those were issued in the early part of 1925?

A. 1924, I believe.

Q. Have you anything to refresh your recollection of that?

A. The President's letter and circular was December, 1924. Our purchase was made in 1924, the bonds being dated November 1st, 1924.

Q. What was the purpose of that issue, and what were the circumstances surrounding the issue of those bonds?

A. The proceeds of that issue of bonds were addressed to checking up the engineer's surveys, and such, the whole purpose being to creat- a new power station. At the time we knew that these ten year obligations were in effect a second mortgage issue, but provision had been made for the authorization of a first and refunding mortgage. The money was to give the company a start in the building of this new plant to be followed up later on and financed in part by first and refunding bonds. In our opinion this situation in Columbia and its vicinity offered very excellent possibilities for the future of an electric light and power corporation, if they could get adequate service. We had that very firmly in mind, not because of the sole reason that we were during 1924 becoming acquainted with these conditions in Columbia, but from the fact that we had previously been very well acquainted down here with connection through other companies.

Q. That was a temporary piece of financing pending the issuance of another series of bonds or new issue of bonds?

A. It was a temporary piece of financing. That was the reason it was made ten year obligations and carried an interest rate of six and a half per cent.

Q. Would you have purchased an issue of bonds of that character from a locally owned company, engaged in the

[fol. 826] same general business as Broad River Power Company was then engaged to finance the improvements that it was about to finance?

A. No; we would not have purchased that obligation if the ownership of the company had rested with the former owners. I don't say that with any reflection upon the former owners. What I am trying to bring out is that with a small local interest in a corporation, it would not have attracted us to the situation, although we would have done the same type of financing if interests like Electric Bond and Share, Middle West and Utilities Company and other large corporations had come in.

Q. The General Gas and Electric Company, being the owner of the Broad River stocks, was the moving consideration, or one of the reasons why you would finance a transaction of that kind?

A. It was an influencing factor.

Q. In purchasing securities, do you look to the nature of the management of the property as well as the nature of the security in making your purchase?

A. Very much so.

Q. What dealings had you had with W. S. Barstow or General Gas and Electric Corporation prior to that time? Had you had any dealings with them?

A. Yes. We had purchased securities of their subsidiary companies for ten or twelve years previous to that, and, as a result, we had a great deal of confidence in the Barstow interests. From our standpoint, management is a very large part of the security, whether in utility, railway or industrial.

Q. By management you mean economy of operation?

A. People who have proven they can successfully operate companies. Who have a good past record and who have administered their ability to accomplish certain things they started out to.

Q. Can you give us any idea of how much security you [fol. 827] have bought from General Gas and Electric Company?

A. I know this year we purchased over forty millions, and over the ten year period I should say over one hundred millions.

Cross-examination.

By Mr. Edmunds:

Q. Mr. Niver, you say you first became interested sometime in 1924?

A. Yes, sir.

Q. Who brought it to your attention?

A. I don't recall just who it was in the Barstow organization, whether Mr. Barstow himself, Mr. Ting or someone else.

Q. That was about what time in 1924?

A. I should think somewheres around May or June.

Q. Then subsequently you took it up in the fall?

A. I say May and June. I have a recollection of being down in Columbia in July, 1924.

Q. With some one connected with the Barstow interest?

A. Yes, I think quite a number of Barstow people were visiting here at that time.

Q. You were here when Mr. Barstow was here consulting with members of the Canal Commission and this dinner was given to him?

A. No, sir.

Q. Was it after that that he consulted with the Canal Commission?

A. I don't know. I hav-n't any knowledge of his talk or consultation with the Canal people.

Q. When you were here with him the first time, did you discuss the street railway system?

A. No. My visit here at that time was just to see Columbia, and I remember we rode around the City in the afternoon and I attended the dinner in the evening, and there was no discussion of the railway situation as I recall.

[fol. 828] Q. I mean with Mr. Barstow?

A. That is who I am referring to.

Q. When was the first time you discussed the railway situation with him?

A. I don't know as I ever discussed it with him.

Q. That didn't enter into the matter, so far as you were concerned as to whether these bonds should be issued, whether it should cover the railway properties or not?

A. Yes, because my talks were with other members of the Barstow organization.

Q. When did you have those talks?
A. I should think sometime after July, 1924.
Q. Very long after, do you think?
A. I don't remember just how long.
Q. A month or two?
A. Somewheres in there.
Q. You say you were impressed with the possibilities of development?
A. Power business, yes, sir.

R. D. JENNISON recalled.

By Mr. Lyles:

Q. Mr. Jennison, from the statement that has already been put in evidence and the books of the Columbia Railway, Gas and Electric Company, have you made up a statement of the current assets and liabilities of that company, as of July 31st, 1925?
A. I have.
Q. As I understand it, this is a transcript from the books of Columbia Railway, Gas and Electric Company?
A. That is true.

Statement marked for identification No. A-26.

Q. This is a mere compilation of the figures that are on [fol. 829] the books and statement taken from the books and put in evidence, is that correct?
A. Yes.
Q. The statement as presented merely lists the current assets and current liabilities, is that correct?
A. Yes.
Q. Do the current assets include the physical property making up the street railway system?
A. They do not.
Q. They do not include the item you testified to before, making up the property constituting the street railway system that belongs to this company?
A. No, sir.
Q. As a matter of fact, I think that item is carried on the books of the Columbia Railway, Gas and Electric Company at about one million nine hundred thousand dollars?

A. Yes.

Q. What does that figure represent as carried on the books? Is it the cost of the property—the figures carried on the books? Do you know?

A. I cannot explain just how the figures were calculated, or how they were placed on the books, but it represents the physical property of the street railway system.

Q. The basis of the valuation that gives you that figure, as carried on the books, you don't know?

A. No.

Q. I believe you gave us an estimate as to the reproduction cost of this street railway system as of July or June, 1925?

A. I did.

Q. As of the same approximate date of this statement?

A. Yes, sir.

Q. That was based on reproduction new?

[fol. 830] A. The basis was reproduction new as of July, 1925.

Q. That was of the street railway system, of tracks, cars, cross ties, trolley wires, and property incidental thereto, that was not carried in the current assets as existing July, 1925?

A. Yes, sir.

Q. You also gave us, as I recall it, an estimate of the salvage value of the property as of the same date, is that correct?

A. Yes.

Q. That estimate was approximately One Hundred Thousand Dollars?

A. Yes.

Q. These current liabilities carry no liability for the old mortgage of the Columbia Railway, Gas and Electric Company or any interest with reference thereto, do they?

A. None at all.

Q. Those liabilities do not appear on the books of the Columbia Railway, Gas and Electric Company after the deed, do they? The liabilities of the mortgage of Columbia Railway, Gas and Electric Company?

A. That I cannot answer from my own knowledge.

Q. They are not on the statement?

A. No.

I offer statement above mentioned as a convenient compilation of these figures, marked Exhibit A-26.

The Court: Yes, sir; it will be admitted.

Q. Have you prepared also an operating statement of the Columbia Railway, Gas and Electric Company, taking the figures from the books of the company, since the deed?

A. Yes.

Statement of operations marked for identification A-27.

[fol. 831] Q. Taking the period from July 1st, 1925, to December 31st, 1925, I notice the operating revenue is Seventy-four Thousand Eight Hundred Ninety-nine and 07/100 ($74,899.07) Dollars. Does that represent all the revenue this company got from any source whatsoever?

A. Yes; that is as to all operating revenue.

Mr. Belser: We object to this witness proving all these matters.

Q. Operating espenses and taxes One Hundred Seven Thousand Nine Hundred Seventy-five and 07/100 ($107,975.07) Dollars, operating deficit Thirty-three Thousand Seventy-six ($33,076.00) Dollars. The figures are the same—that is cover the same items for the year 1926 and from January 1st, 1927, to February 28th, 1928?

A. Cover the same class of items. The items themselves may not be the same.

Q. We will take the year 1926, and our explanation or testimony with reference to that will apply equally to the other years?

A. It would.

Q. Included in operating expenses and taxes for 1926 is an item of power, cost of power purchased Twenty-seven Thousand Five Hundred Four and 60/100 ($27,504.60) Dollars, is that correct?

A. Yes, sir.

Q. The pole rental Twenty-one Hundred Thirty-three and 40/100 ($2,133.40) Dollars?

A. Yes.

Q. Will you tell us whether in reaching this operating deficit there has been any charge made for interest of any kind on indebtedness?

A. No.

[fol. 832] Q. Tell us whether it includes a charge for any depreciation?

A. No, sir.

Q. Have you had experience in the valuation of utility properties?

A. I have.

Q. Have you had experience in determining proper depreciation for utility property?

A. Yes.

Q. Extending over the period of your experience you have testified, your experience with general utility work, what would be proper depreciation? You can give us a conservative limit, and you can give us the highest limit you think reasonable for a street car system of this general character?

A. Between fifty and sixty thousand dollars a year and possibly seventy thousand dollars.

Q. You have given me the money result. I want you to give me the explanation of how you arrive at that? How do you figure depreciation?

A. On a percentage basis on the property value.

Q. How do you figure depreciation on a utility?

A. There are several measures of that. Some engineers, some operators consider it on a mile of track basis, some on a percentage of the physical property, others on a percentage of the gross business done. In my answer I consider the first two yard sticks, that is the amount of money per mile of track per year and a percentage upon the physical property. Between three and four per cent. of the physical property is in my opinion about the right charge from that basis of measuring.

Q. That is three or four per cent. of the value of the property?

A. Yes, sir; and approximately two thousand to twenty-five hundred dollars per mile of track on the other basis.

[fol. 833] Q. We couldn't get at the proper measure for depreciation with reference to this property based on the value of the property without having the value of the property in some way?

A. I think you could get it per mile of track basis.

Q. We couldn't use the percentage on the value of the property in this instance unless we had some definite valuation of the property?

A. That is true.

Q. State whether or not it would be fair to say that the depreciation charge for the year 1926 would be considered in determining the question of fair return on this property, would it be a substantial item?

A. Very substantial.

Q. You would place the minimum at what?

A. Fifty-thousand Dollars.

Q. Maximum at what?

A. Sixty-five Thousand dollars.

Q. That same depreciation charge would of course apply to 1925?

A. I am talking about average years. Over a period I would apply the same amount to each year.

Q. That is six months 1925, one-half, 1927 the same, and two months in 1928 would be one-sixth of that?

A. That is right.

Q. Of course it is perfectly apparent from this statement, assuming these figures to be correct, that Columbia Railway, Gas and Electric Company for the year 1926 failed to receive a fair return on its investment by the amount of Forty-seven Thousand Six Hundred Thirty and 35/100 ($47,630.35) Dollars, plus the amount of depreciation chargeable for that year, which you say is fifty thousand dollars, plus whatever would be the amount of the return that it should reasonably receive on the value of the prop- [fol. 834] erty representing its profits or net earnings for that year?

A. The sum of these three factors would indicate the totals you have described.

Q. What is considered a fair return for utility to make on the value of its property over and above the proper depreciation charge and after paying operating expenses and taxes?

A. Speaking from my own experience with cases before public service commissions, seven per cent. Knowledge of decisions and determinations in cases in which I have not been personally interested would confirm that statement. In some cases the United States Supreme Court has approved a return as high as eight per cent. In one of the companies of General Gas and Electric Company, the New York State Court has approved eight per cent return for

that company. I think more states permit seven per cent than eight.

Q. Taking the year 1926, Columbia Railway, Gas and Electric Company should have earned seven per cent. at least on the fair value of the property of that street railway system that it was devoting to the public service?

A. Yes.

Q. The same principle would apply to the six months in 1925, and to the period from January 1st, 1927 to February 28th, 1927?

A. Precisely the same.

Statement of operations introduced in evidence and marked Exhibit A-27.

Q. In the statement in question for the year 1926, and also for the year 1925—Take the year 1926, because that is the only complete year—we find a charge for power made. That power was sold to Columbia Railway, Gas and Electric Company by Broad River Power Company?

A. Yes, sir.

[fol. 835] Q. The total amount paid by Columbia Railway, Gas and Electric Company was Twenty-seven Thousand Five Hundred Four and 60/100 ($27,504.60) Dollars?

A. It was.

Q. That amount is charged in as expense of Columbia Railway Gas and Electric Company?

A. Yes, sir.

Q. What was the rate for power?

A. One and a half cents per kilowat- hour, alternating current measurement.

Q. It has been suggested that for instance the Broad River Power Company should have charged the Columbia Railway, Gas and Electric Company for that power at the rate of one and one-tenth cents—the rate which Pacific Mills paid for its power. Will you make any defense that seems to you to be reasonable and proper?

A. It is well known that one of the factors in making rates, not only in electric companies, but almost anything else, is the quantity used of the commodity. The larger the user the lower the rate. That is a fundamental condition I think most everyone will recognize. In this case, the Pacific Mills used nearly twenty-five million kilowat- hours a year, and purchased all from Broad River Power Company. They have a power demand in excess of five thou-

sand; they have an annual load factor of sixty per cent, and I mean by that that they use of their demand sixty per cent of every hour of the year, which is extraordinarily high, and it is a very desirable customer for the electric utility. Compared to that, the Street Railway Company purchased varying amounts, from One Hundred Twenty thousand kilowat-s a month up to two hundred fifty to three hundred thousand kilowat- hours a month. Bear in mind how that compares with over two million a month purchased by Pa-
[fol. 836] cific Mills. The load of the Columbia Railway, Gas and Electric Company was very much smaller than the Pacific Mill load, and the load factor very much poorer. These fundamental reasons would tend to explain the difference in rates from one aspect.

Assuming Columbia Railway, Gas and Electric Company was given the same rate schedules that Pacific Mills purchased under, they would have paid about one and a third cents. That schedule is the so-called cotton mill schedule number one, and has a graduated scale of charges from one and one-fourth cents per kilowa*y* hour down to one cent. The purchase of kilowat- hours used by the railway, if the contract had been signed on that schedule, would have given a rate of around one and a third cents.

Q. Do you mean they would have paid, if they had the same schedule as the cotton mill, one and a third cents?

A. That is right. In accepting that rate, the railway would have had to accept as well the conditions of that rate; namely, those of minimum guarantee. The reason for making it to cotton mills is their ability to maintain and live up to the minimum amount every year. That minimum is that the customer must pay for two-thirds of the kilowa*y*-hours per month that it contracts for, if it don't use them, it has got to pay for them. The street railway would have had a contract back in 1925 for excess of three hundred fifty thousand kilowat- hours per month—its minimum commitment would have been for two-thirds of that amount, or in the neighborhood of two hundred thirty thousand kilowat- hours per month. As I stated before, they would have bought that at about one and a third cents a year or two later when the kilowat- hour consumption of the railway declined and they got down to slightly over one hun-
[fol. 837] dred thousand per month, they would have had to pay just as the cotton mill would have had to pay—on a

basis of its minimum of two hundred thirty thousand kilowat-s per month.

Mr. Page: Our friend is going extensively into the provisions of the contract between the Broad River Power Company and the cotton mill, and we think the contract would be the best evidence, and we would like to see one of those contracts. I think there is a serious question as to what the contract was between the Pacific Mills.

The Court: If there is a material variance, I think you had better get it.

Mr. Page: There is a very material variance in the testimony offered by this witness and the testimony given by other witnesses of the power company before the railroad commission.

Witness: There is one of the mills of the Pacific Mill group which has an old contract made before the Railroad Commission was formed, which runs out this month, or has run out very recently. The other mills buy on schedule number one. The average rate of the Pacific Mills, considering the mill which still continues to buy under its old contract and the other mills is eighteen mills, figured by the schedule one. The actual average bill paid the Broad River Power Company, including the one remaining mill, which has the old contract, is ten and an eighth mills, nearly eleven mills. There is one mill of the group which has an old contract just about to expire.

Mr. Lyles: If you want the contract, we will be glad to get it for you.

Mr. Page: I think there is one very material matter that has not been covered.

Mr. Lyles: We will proceed with the examination, and we will be glad to furnish the schedule.

[fol. 838] Witness: They would have paid in excess of two cents per kilowat hour during part of this period. Broad River Power Company also owns and maintains the rotary convertors, which changes the alternating current to direct current, which the Railway Company has to have for operating its cars, and that is something it doesn't do for any other customer.

Q. There has been something said about the item in the expenses of the Columbia Railway, Gas and Electric Company, take the year 1926—the item of Twenty-one Hundred

Thirty-three and 40/100 ($2,133.40) Dollars for pole rental, will you explain what that is—the basis of the charge?

A. That is a charge made by Broad River Power Company to Columbia Railway, Gas and Electric Company at the rate of One and 50/100 ($1.50) a pole for the occupancy and maintenance and replacement of those poles. Those poles being used partially by the street railway and partially by the Broad River Power Company.

Q. What does the street railway use them for?

A. It doesn't use them at all at the present time, excepting to support the trolley wires that were in use when the street railway was in operation.

Q. What did they use them for in 1926?

A. For supporting overhead trolley system of the street railway company.

Q. Tell us whether that is a fair and reasonable charge, and testify as to that in any way you see fit to do?

A. The Broad River Power Company agreed to maintain and renew when necessary these poles. The best measure I know of, or the best comparison I know of to prove the fairness of that charge is what is usually charged between public utility companies for similar arrangements, and that runs from One and 25/100 ($1.25) Dollars to One and 75/100 ($1.75) Dollars a pole.

Q. You mean for instance the Southern Bell Telephone [fol. 839] Company and Broad River Power Company have an agreement between themselves that each one might put its wires on the poles of another?

A. That is true. The charge is made by the company?

Q. That is a reciprocal agreement?

A. Yes.

Q. In some cases the Electric Company uses the Telephone Company's poles and the Telephone Company uses the Electric Company's poles?

A. That is right.

Q. It runs from One and 25/100 ($1.25) Dollars to One and 75/100 ($1.75) Dollars?

A. Yes; in various locations. It is not the same.

Q. You can take the year 1926 and wipe out these two items entirely and you would still have a substantial deficit.

A. That is true.

Q. A more substantial deficit if you would take into consideration a fair return on the investment and depreciation?

A. Yes, sir.

Q. Has the Broad River Power Company ever undertaken or professed to furnish street car service?

A. Not to my knowledge.

Q. Have you made up a statement of earnings of the Broad River Power Company that is based on the evidence that has already been put in?

A. Yes, sir.

Q. Have you that before you?

A. I have.

Statement marked for identification A-28.

Q. That is for the year 1927. We will pass up the operating revenue, operating expenses and taxes—that brings you down to operating income, and then other income brings you down to "Total Income" One Million Five Hundred [fol. 840] Fifty-six Thousand Three Hundred Sixty-two ($1,556,362.00) Dollars—that is the amount of money the company had after paying the operating expenses and taxes, is that correct?

A. Yes.

Q. Taxes being as *sudden* as death and operating expenses being incurred in the earning of the money, that is all the money you had to apply for anything else, of for any other purpose?

A. That is all the money coming from the source of operating revenue. We perhaps had more funds from other sources.

Mr. Belser: We have no objection to the witness testifying about the calculation, but so far as additional statements as to what other evidence they may have as independent evidence, we object to that because the witness is not qualified.

Mr. Lyles: I am not trying to prove the correctness of entries on the books. I am only asking him in particular about the propriety of these deductions, assuming the figures correct. We will have to prove the correctness of the figures by the man who made the mark, and I am not offering his testimony as to the correctness of these figures, be-

cause he is not the book-keeper. I want to ask him particularly about the depreciation charge while he is on that line.

The Court: All right, sir.

Q. I want you to explain the depreciation charge that you put in there—provision for depreciation three per cent on Nineteen Million Four Hundred Seventy-seven Thousand Five Hundred Fifty-three ($19,477,553.00) Dollars?

A. Three per cent on Nineteen Million Four Hundred Seventy-seven Thousand Five Hundred Fifty-three ($19,477,553.00) Dollars is Five Hundred Eighty-four Thousand Three Hundred Twenty-six ($584,326.00) Dollars, which in my opinion is a proper allowance proper annual allowance for depreciation on the property of Broad River Power [fol. 841] Company.

Q. That property, speaking most generally, consists of what kind of property—not going into details, but just tell us generally what it consists of?

A. It consists of hydro-electric plant at Parr Shoals, twenty thousand kiloway, consists of forty-two thousand kilowat steam station at Parr Shoals, five thousand kilowat station on the Columbia Canal, five thousand kilowat steam plant in Columbia, transmission lines between Parr Shoals and Columbia, between Columbia, Batesburg and Johnson to the southwest, and to Orangeburg, Saint Matthews, Salley and North and several communities to the southeast; lines to the Winnsboro Mills and to Ridgeway, and many substations, and the general production, transmission and distribution system of the company.

Q. On the financial statements put in evidence the depreciation items were not carried?

A. I am not sure of that. The figures that I have assembled the depreciation item is not included.

Q. On property of that character, consisting of the classes of electrical generation and distribution property you mentioned, is a charge of three per cent for depreciation a fair charge?

A. I believe so.

Q. Is there any actuality that much depreciation would be charged on the properties every year?

A. This is an average yearly amount. There might be more in one year than others. Over a period of years that is a proper measure.

Q. From your experience in valuations of public utility property and in arriving at a proper charge for depreciation based on that, do you consider three per cent a fair basis?

A. I do for this property. I would make it different for [fol. 842] other properties.

Q. Would you make it in some cases higher?

A. In most other cases I would make it higher. There is a large investment in hydro electric developments, a number of which at least has not as high depreciation as a steam station. On the other side of course is the fact that some of the system is still forty cycles and must be changed to sixty. You asked me about depreciation being in the statements filed. There is no figure that I know of in the statements filed showing depreciation similar to the amount I gave. There is one explanation of this I should make—there is a subtraction from the total income of approximately Fifty-four Thousand Dollars—that is purely my own subtraction for the reason that I considered that interest from sinking funds and bank balances have no place in earnings when a calculation upon fair return is being made—true they are in the earnings of the company, but for this purpose I have taken them out.

Q. What is that, interest received or paid by the company?

A. It is interest received by the company. It appears under other income or rather it is included in other income, which totals Two Hundred Twenty-three Thousand Four Hundred Twenty-five ($223,425.00) Dollars. Of that income, Fifty-four Thousand Ninety-four ($54,094.00) Dollars is represented by interest on sinking fund and bank balances. It is not an operating revenue of the company and not sale of electricity—it represents interest received.

Q. Does operating expenses include interest paid out?

A. No. In this tabulation there are no charges whatever for interest received and paid out.

Q. On what basis did you take the Nineteen Million Four Hundred Seventy-seven Thousand Five Hundred Fifty-three ($19,477,553.00) Dollars?

[fol. 843] A. That was the amount shown on the balance sheet of Broad River Power Company as its property including the construction for the current year.

Q. If those figures be correct, Mr. Jennison, for the year 1927, the Broad River Power Company received a return on its investment of Nine Hundred Seventeen Thousand Nine Hundred Forty-two ($917,942.00) Dollars, is that correct?

A. Yes.

Q. When you figure the fair return, or reasonable return on the property of a public utility, you do not charge in the expenses or take into consideration either the interest it pays on its bond- or any other character of interest, is that correct?

A. In the expenses that is true.

Q. You don't consider the dividends that have been paid on the stock, either common or preferred?

A. That is correct. There is one statement I would like to make: the remaining part of other income which I included in the total income is interest during construction, which is added to the revenue of the income of the company. That is not return from elect. or gas sales, but, inasmuch as some property is in the Nineteen Million Four Hundred Seventy-seven Thousand Dollars, I thought it fair to include some of the income in the statement.

Q. That income is charged in the bond account, as provided in reference to taking down the bonds? Where does the company get the interest from?

A. As I understand it the construction of a power station requires that money be expended for some period of time before the property is placed in service. Say it takes a year to build a power company, interest goes along during that year. In the other income of the company is included an item of interest during construction, which is an offset to [fol. 844] some of the interest paid on the money, carried in another place as a deduction from income.

Q. What is the situation with reference to the forty cycle and sixty cycle, very briefly, Mr. Jennison?

A. The entire Columbia situation, electric situation, has been, up until recently, served by forty cycle generation at the power plants. Forty cycles is very much out of date and decidedly unfashionable. The neighboring stations are all sixty cycles, and it is wise to change the generation

to sixty cycles. The new Parr Shoals plant was build at sixty cycles.

Q. Can you tie in on other plants?

A. When the frequency changes, it loses. It is not a very good operation.

State of Broad River Power Company for the year 1927 introduced in evidence and marked Exhibit A-28.

Cross-examination.

By Mr. Belser:

Q. I am afraid I am extremely a poor bookkeeper, and it's a whole lot worse than if you were talking in Greek. I am going to ask if you can't help me out a little bit. Your statement you have for the year 1926, showing the net losses of Forty-seven Thousand Six Hundred Thirty and 35/100 ($47,630.35) Dollars, do you see that?

A. Yes.

Q. You see that Twenty-seven Thousand Five Hundred Four and 60/100 ($27,504.60) Dollars cost of power purchased?

A. Yes.

Q. Is there any question about that being a correct statement for power charged to Columbia Railway, Gas and Electric Company in your mind?

A. That is just what it says: "Power purchased from Broad River Power Company.-

[fol. 845] Q. Where did you get the figures from?

A. From the books of the Columbia Railway, Gas and Electric Company and also the books of Broad River Power Company.

Q. Did you check them yourself?

A. I have checked them this way—I have multiplied the kilowat hours by one and a half cents, and it yields that figure.

Q. You checked over the number of kilowat hours and multiplied it by a cent and a half and got that figure?

A. Yes, sir.

Q. Where did you get the kilowat hours from?

A. From the consumers ledger of Broad River Power Company.

Q. Taking then the Kilowat hours the Broad River Power Company books show was sold to the Columbia Railway, Gas and Electric Company and multiplying that by a cent and a half, the rate, you get Twenty-seven Thousand Five Hundred Four and 60/100 ($27,504.60) Dollars?

A. That was my method of checking this, but this was obtained from the books of the Columbia Railway, Gas and Electric Company.

Q. You verified this as being an accurate calculation made by yourself?

A. The kilowat hours was one million eight hundred thirty-three thousand six hundred forty (1,833,640).

Q. That is what the books of Broad River Power Company showed that was sold to Columbia Railway, Gas and Electric Company during that period?

A. Yes.

Q. You say that you get with that figure a net deficit for the year of Forty-seven Thousand Six Hundred Thirty Thousand 35/100 ($47,630.35) Dollars?

A. No, sir; that net deficit doesn't result from the use of [fol. 846] the figure Twenty-seven Thousand Five Hundred Four and 60/100 ($27,504.60) Dollars, because there are other elements of power cost besides actual purchase of electricity. Perhaps that is what is giving you the impression this doesn't check with the statement. I can explain it. In the operating statements of the Railway Company there are other costs included under the heading of "power," which is more than the cost of kilowat hours. For example, some of the sub-stations running rotary converters.

Q. Here is a paper offered in evidence by your counsel, Exhibit A-19, where it shows power charges for that year as being Thirty-one Thousand Two Hundred Seventy-seven and 45/100 ($31,277.45) Dollars?

A. Yes, sir. If you will turn to this sheet, you will find the cost of power purchased Twenty-seven Thousand Five Hundred Four and 60/100 ($27,504.60) Dollars, which is the exact figure which I gave you. The balance, as you will see, goes under sub-station employees.

Q. The Columbia Railway, Gas and Electric Company paid to the Broad River Power Company during this year, not this figure of Twenty-seven Thousand Five Hundred

Four and 60/100 ($27,504.60) Dollars, which your little tabulation indicates, but the total of Thirty-one Thousand Two Hundred Seventy-seven and 45/100 ($31,277.45) Dollars?

A. No, it paid what I stated, twenty-seven thousand five hundred four and 60/100 ($27,504.60) Dollars. The balance of what it paid was to the men that did the work in the sub-station.

Q. That sub-station, during 1926, belonged to Broad River Power Company?

A. It did.

Q. The Columbia Railway, Gas and Electric Company is charged with that Thirty-one Thousand Two Hundred [fol. 847] Seventy-seven and 45/100 ($31,277,45) Dollars for substation employees?

A. That is the charge which is pro rated of the total—it is operation of the sub-station—labor cost—some of the total was pro rated to the railway company because some of the sub-station includes rotary converters. Many of the duties of some of the men is the operation of the rotary converters as well as the electrical equipment in the station.

Q. I suppose the same explanation will apply for power for 1927?

A. It would.

Q. The statements furnished the Railroad Commission total Four Thousand Five Hundred Sixty-one and 40/100 ($4,561.40) Dollars, under the head of power, whereas your tabulation shows Thirty-nine Hundred and 60/100 ($3,900.60) Dollars?

A. I have stated this, not as cost of power, but the cost of purchased power. This includes only the kilowat hours. You will find the exact figures in the detail of operating expenses. The total you have read includes kilowat hours purchased as well as sub-station operators. The total of the two gives the total which you have read. I wanted to make a calculation on a different thing from what you read.

Q. Let's go back for a minute to this statement which you filed of the current assets and liabilities of the Columbia Railway, Gas and Electric Company as of July 31st, 1925. You said you made an estimate that a million and three-quarter dollars would be the replacement cost of the

street railway system. Included in that estimate of a million and three-quarter dollars did you mean to intimate or say that it is your idea that the replacement cost of the tracks and ties and trolley wires, etc., would be that amount? What did you include in that item, if you did [fol. 848] make that estimate of which that is the reproduction cost new?

A. All the cars, all the wiring stock, the track, the overhead, paving, bonding tracks—the entire system.

Q. Would you include in such system poles necessary to hang the wires? You said reproduction cost for the system a million and three quarter dollars—did you include in that estimate the item of reconstructing poles?

A. No, just the tracks. They are the Power Company's property.

Q. In order to reproduce the street railway system you would have to have the poles—how much extra would it cost to build the poles?

A. About fifteen to eighteen dollars per pole.

Q. How many poles on this system? Can you make an estimate of that? What is the reproduction cost of the poles used in connection with this railway system?

A. I have not made a calculation, because I didn't include the poles in my reproduction cost. I would have to ascertain the exact number of poles. My reproduction cost was on the basis that we were to reproduce new the street railway system owned by the Columbia Railway, Gas and Electric Company as of July 31st, 1925.

Q. That is just the tracks, trolley wires and the street cars? That is about all they had left under that deed?

A. The trolley wires includes brackets and the spans, guy wire necessary to support the overhead conductors.

Q. It didn't include the car barn and all that?

A. No. If I had made a reproduction cost including the substation and car barn it would have been in excess of a million and three quarter dollars.

Q. Could you expect the street railway system to operate [fol. 849] without car barns or substation?

A. No, it would have to have either the ownership of car barns or the use of car barns. It might operate without a sub-station.

Q. Under this scheme by which all the electric power and poles, sub-station, car barns, etc. were turned over to the

Broad River Power Company, of course the existence of the Street Railway Company after that was in the control of Broad River Power Company, as to operating, wasn't it?

A. I don't think so, because the Broad River Power Company permitted the Street Railway Company to use those car barns without any charge. It was a matter of operating agreement.

Q. They could stop that, so far as they wanted to, without even any written agreement to do so?

A. Not that I know of. I know that was the practice.

Q. The Broad River Power Company would have a legal right, assuming it is a different concern from the Columbia Railway, Gas and Electric Company, even to prevent Columbia Railway, Gas and Electric Company from using the poles?

A. There is a contract between Broad River Power Company and Columbia Railway, Gas and Electric Company, covering the use of these poles—there is a written signed contract.

Q. I believe you said there was a contract between these two companias, and you handed me this paper, which I have in my hand, which you say is a copy?

A. Yes.

Q. This contract provides it is terminable by either party giving to the other at least sixty days written notice specifying termination?

A. Yes.

Q. Notwithstanding the contract, it is not binding on [fol. 850] either party after sixty days notice to revoke it?

A. I presume that is legally so.

Q. So the contract between Columbia Railway, Gas and Electric Company and Broad River Power Company would leave the Columbia Railway, Gas and Electric Company subject to the domination of the Broad River Power Company?

A. I wouldn't put it that way.

Q. I want to ask you to take the copy of the evidence introduced before the Railroad Commission, Mr. Costello's testimony, Exhibit No. 3, turn here to page 25, "poles and fixtures," about the middle of the page, Twenty-one Hundred Thirty-three and 40/100 ($2133.40) Dollars, and the

answer is "that is maintenance of poles and fixtures during that period"—do you notice that?

A. Yes.

Q. I hand you also this compilation—statement marked Exhibit A-19, J. W. W., and looking at the year 1926 of detail of expenses you see "poles and fixtures" Twenty-one Hundred Thirty-three and 40/100 ($2,133.40) Dollars, which Mr. Costello says *says* is maintenance of poles and fixtures—you see that?

A. Yes, sir.

Q. What did you — about that?

A. That is the charge for the pole rental at $1.50 a pole. It is uncluded under the maintenance accounts in the report which I assume is why Mr. Costello called it maintenance of poles and fixtures. In ordinary ways, structures and equipment, everything in this ma-n account are ordinarily referred to as maintenance. This particular item of Twenty-one Hundred Thirty three and 40/100 ($2,133.40) Dollars is the pole rental paid to Broad River Power Company.

Q. You disagree with Mr. Costello to the effect that was [fol. 851] for maintenance? You say pole rental?

A. No, I don't disagree. Every item under ways and structures is considered maintenance in the ordinary terminology of a railway company.

Q. This agreement is to do maintenance and renewal?

A. Of the poles only.

Q. You treat the term rental and not maintenance—that expenditure of Twenty-one Hundred Thirty-three and 40/100 ($2133.40) Dollars?

A. Yes; there is no other charge for maintenance of poles in the ways and structures.

Q. Do you know anything about the number of employees they have at the sub-station, or what the duties they perform mostly?

A. I don't know the number of employees. That sub-station is used, or was used up until the cessation of the street railway operation, for housing and operating the rotary converters to give service to the railway and also for the housing and operation of street lining equipment in the electric department, switches for incoming and outgoing

distribution service and battery charging outfits, and things of that sort.

Q. Do you know what portion of time they spent with the railway service, as compared with what they spent with the other branches of the electrical or power business?

A. My judgment is, knowing the general use to which the sub-station was put, that probably two-thirds of the time of the operators was spent on operating and carying for the rotary converters for the street railway.

Q. A good deal was said by you about the matter of depreciation—does good bookkeeping always require that depreciation be charged off of properties of this sort?

A. I am afraid you will have to ask that from an accountant. I don't know.

[fol. 852] Q. Ought depreciation be charged off before you hand out dividends as to properties of this sort?

A. I think that is largely a matter for the management of utility to decide.

Q. In that connection, you may recall these statements that were put in evidence, which show for example, as I recall, the Columbia Railway, Gas and Electric Company had what they called net earnings of Seven Hundred Fifty-nine Thousand dollars for the twelve months ending December 30th, 1924, and I believe you said, so far as you knew, there had not been any depreciation charged off for that?

A. I have forgotten, Mr. Belser.

Q. You heard Mr. Campbell testify that Broad River Power Company paid Nine ($9.00) Dollars a share in 1925 and Seven ($7.00) Dollars in 1926—you remember that?

A. I remember the 1925 figure. I do not recall the 1926.

Q. Did you check off to see whether they charged off depreciation for those years?

A. No, I do not think I made the statement I checked off any at all.

Q. That is a pretty good indication they did not charge off depreciation when it gets up to Nine ($9.00) Dollars a share?

A. I would think so.

Q. If we charged off all this depreciation you have here and charge off the interest on this bonded indebtedness, you mighty near bring your company, the Broad River Power Company, out in a deficit, don't you? I notice here, for

example, under refunded debt, during that year in this statement of the assets here, marked A-10, of the Broad River Power Company, bonded indebtedness, thirteen million two hundred seventy-two thousand dollars, five, six and a half and seven and a half per cent. bonds. If you take an [fol. 853] average of six per cent on thirteen million dollars that makes seven hundred eighty some odd thousand dollars?

A. I would prefer to take the actual interest charges.

Q. You can look at it if you want. Just roughly is all I want?

A. Roughly it is somewhere between seven and eight hundred thousand dollars. Eighty Hundred Thirty-three Thousand Two Hundred Twenty-seven ($833,227.00) Dollars for the year 1927.

Q. That would leave on this balance you have listed on the statement of Broad River Power Company for 1927 how many thousand dollars? The difference between thirteen million and eighty hundred thirty-three thousand two hundred twenty-seven dollars?

A. I don't exactly understand what you mean.

Q. I am trying to get at the idea, if you really deduct the depreciation charge you have spoken of here, you have a very small sum which is really available, according to your statement for devidends?

A. After taking the bond interest out of the year 1927, according to this sheet there would be Seven Hundred Twenty-three Thousand dollars left. If you take the depreciation out of that, you would have about one hundred sixty or one hundred seventy thousand dollars.

Q. That company paid some dividends during that year?

A. Yes.

Q. How much?

A. One Hundred Seventy-three Thousand One Hundred Seventy-six ($173,176.00) Dollars on common stock.

Q. How much on preferred stock.

A. Two Hundred Sixty-six Thousand Three Hundred Thirty-seven ($266,337.00) Dollars.

[fol. 854] Q. Anything else on dividends?

A. Not that I know of.

Q. What do those figures total?

A. Four Hundred Thirty-nine Thousand Five Hundred Thirteen ($439,513.00) Dollars.

Q. Paid out in dividends, according to that?

A. According to the information I have here.

Q. How much was set aside for surplus?

A. Fifty-one Thousand Five Hundred Forty-four ($51,544.00) Dollars.

Q. What do those total up there?

A. Four Hundred Ninety-one Thousand Fifty-seven ($491,057.00) Dollars.

Q. That is nearly five hundred thousand dollars paid out for dividends and set aside as surplus during the year 1927?

A. Yes.

Q. Isn't the only proper justification for the fact that such a large amount was paid out for dividends and surplus during that year the fact that this depreciation charge is one which may or may not be set up, according to the type and condition of your property?

A. As I stated—this depreciation charge is an average figure. As I stated, it might be higher one year than the next year, but over a period of years that is a proper amount, in my opinion.

Q. This year 1927, your book-keepers did not set up a depreciation charge at all—the bookkeepers of this company, the Broad River Power Company?

A. I cannot answer that.

Q. I thought you said that?

A. No, I didn't say that. The testimony which I heard stated this statement was before depreciation was charged. [fol. 855] Q. You don't know from your investigation of the books that they did not set up depreciation?

A. I have had no occasion to check all that.

Q. A large portion of the Broad River Power Company was just in construction during the year 1927, wasn't it?

A. There was One Million Eight Hundred Ninety Thousand ($1,890,000.00) Dollars under construction during 1927.

Q. How much was constructed during 1926?

A. I haven't those figures.

Q. Do you know how much was paid in dividends and set aside as surplus for 1926?

A. I haven't that.

Redirect examination.

By Mr. Lyles:

Q. Mr. Jennison, what were the rotary converters for?

A. For changing the electricity from direct current to alternating current for use on the street railway. Changing it from alternating to direct, I should have said.

Recross-examination.

By Mr. Belser:

Q. I am struck with this fact with reference to the statement which you have issued here—we have set up under the head of reserves before we get the figure here, depreciation of Three Hundred Forty-seven Thousand Nine Hundred Ninety-one ($347,991.00) Dollars.

A. That is not a depreciation charge—that is depreciation reserve. That may have been built up over a long period of years. That is in the balance sheet and not income statement.

Redirect examination:

Q. You said these rotary converters were to change the current so the street cars could use it?

A. Yes, sir.

[fol. 856] Q. If the street car company owned the converters they would have had to pay these operators?

A. They would.

Q. In your judgment is this amount charged during the year that Mr. Belser was asking about, would it cost that much or more than that to pay their own operators?

A. It would have cost the railway more than that.

Q. This pole contract that I believe you spoke about—it was terminable within sixty days?

A. Yes, sir.

Q. Is that an ordinary provision in these pole contracts?

A. That is the way we usually write them.

Q. Did the Broad River Power Company terminate it before the cessation of the street car service?

A. No.

Q. If we assume that the Broad River Power Company had dominion and control over the Railway Company, do you know of anything that the Broad River Power Company did to stop the operation of the street cars, or to make it difficult or expensive for the Columbia Railway, Gas and Electric Company to continue operations?

A. Not one single thing that I know of.

Q. If they had wanted to stop the street cars, and the Broad River Power Company had not loaned them this money, which started back in 1925—if Broad River Power Company had not loaned the money in 1925, they would have had to stop them, wouldn't they?

A. If the losses had continued to be as substantial as they were, I think so.

Q. Outside of the ones that I have asked you about that have been questioned as being legitimate and reasonable charges against the Street Railway, are you familiar with [fol. 857] the charges against the Street Railway?

A. As to many.

Q. Do you know any charges that were unreasonable or unfair to the Street Railway?

A. I do not.

Q. Did they charge any rental for the use of the car barns?

A. The Broad River Power Company charged the Columbia Railway, Gas and Electric Company nothing for the use of the car barns.

Q. They would let the cars stay in there without cost?

A. They did.

Q. Speaking generally and from your knowledge of this situation and your experience, if there had been no connection whatsoever by stock ownership between Columbia Railway, Gas and Electric Company and Broad River Power Company during the period, discussing from 1925 down to March, 1927, do you think, or is it your opinion and judgment that, if the Columbia Railway, Gas and Electric Company had been absolutely disconnected and disassociated, do you think it could have kept up, starting

out with the assets it did in 1925, could it have kept up the operation of the street cars as long as it did keep them up with the assistance of Broad River Power Company?

A. With or without assistance?

Q. It is in testimony the Broad River Power Company loaned them some fifteen thousand dollars—together with the car barns—suppose that had not been done, would the street cars have operated as long as they did?

A. I think not.

Recross-examination:

Q. I think these hypothetical questions are a little far afield, but I feel I ought to ask one or two qustions in reply. You heard the testimony of Mr. Campbell and Mr. King?

A. Yes.

[fol. 858] Q. To the general effect that Broad River Power Company had taken from Columbia Railway, Gas and Electric Company, under this so-called separation, property with a net value equity over and above liabilities of about Four Million Four Hundred Thousand Dollars?

A. I remember the figures, but I don't recall their significance.

Q. The Columbia Railway, Gas and Electric Company had, before this transfer to the Broad River Power Company, property with a net value above all liability of about Four Million Four Hundred Thousand dollars—you remember that?

A. I remember those figures.

A. Assuming the Columbia Railway, Gas and Electric Company still had or had from 1925 on down to date all of that property, including Four Million Four Hundred Thousand Dollars net equity, wouldn't it have been able to continue operating?

A. I doubt it very much.

Q. Even One Hundred Thousand Dollars' loss a year, that isn't but interest on two millions, is it?

A. I haven't looked at it from that standpoint. I looked at it this way, if the Railroad Company was losing money each year, whether or not those losses should be paid for by the gas and electric customers is a matter I would be unable to determine. I would doubt very much if the Street

railway had continued in operation under any of the conditions which you have asked me.

Q. In 1925 the total deficit claimed was Eighty-seven Thousand ($87,000.00) Dollars, of which power expense was Fifty Thousand ($50,000.00) Dollars—you know that?

A. I remember those figures.

Q. So that leaves a net operating deficit to the company as a whole, taking the basis put in the Commercial and Financial Chronicle, of only Thirty-seven Thousand ($37,000.00) Dollars?

[fol. 859] A. Somebody has to pay for the power. It couldn't be given away free.

Q. You have plenty of income for 1925? What was the income of the combined companies for 1925? Do you happen to know about that?

A. I don't know. I haven't anything in my possession that would show that—except of the railway department.

Q. In 1925, the total deficits claimed was Eighty-seven Thousand ($87,000.00) Dollars, of which Fifty-thousand ($50,000.00) Dollars was power, and that leaves a net deficit to the company of Thirty-seven Thousand ($37,000.00) Dollars?

A. That is not correct, because the cost of that power must be met by somebody.

Q. Nobody has a deduction on power charges from the fact that the street railway company is no longer connected with it?

A. I think that is right.

Q. It wouldn't have been added to or decreased by this loss by the street railway department?

A. At the expense of the gas and electric customers.

Q. At the expense of the stockholders of the company? It would decrease the earnings of the company and distribution in dividends?

A. I do not so conceive it. I conceive it this way, that those losses must have been paid for by the gas and electric consumers.

Q. Your answer sets up that it decreases the net earnings?

A. You asked me if the rates had been decreased, and I said not to my knowledge.

Q. 1926 net deficits claimed—total deficits Forty-seven Thousand ($47,000.00) Dollars, of which the power expense

was Thirty-one Thousand and something dollars, and that leaves a little over Sixteen Thousand dollars for the net [fol. 860] deficit to the company. You don't mean to say you think those small differences in the net earnings of the company combined, with all of its assets, all of its franchises and privileges, would have the effect of consuming four and a half million of dollars in two or three years?

A. I haven't made any such statement. I say I don't think the railway service could have been kept going, even without the separation. There is an immediate expenditure of upwards of one and three quarter million dollars on this railway to keep it running if it once starts, and the losses are largely going to continue to be heavy, if railway service is required.

Q. You were still running in 1927?

A. Even so. It could not be kept running without those very substantial expenditures for replacements and renewals.

Q. You testified a while ago five or six hundred thousand dollars, and now you have got up to one and three quarter million dollars?

A. If the railway did start off, they would have to have some cash to start on.

J. W. Spence sworn.

Direct examination.

By Mr. Lyles:

Q. Mr. Spence, for whom are you now working?

A. Broad River Power Company.

Q. What capacity?

A. Claim Agent.

Q. Prior to the cessation of street cars on March 11th, 1927, for whom did you work?

A. Columbia Railway, Gas and Electric Company.

Q. How long had you been connected with that company under that name and the other name before that time? How long had you been working for Columbia Railway, Gas and Electric Company?

[fol. 861] A. Been working for the company about twenty-eight years. I started in 1900.

Q. In what capacities did you work with Columbia Railway, Gas and Electric Company?

A. Superintendent.

Q. What capacity did you start in?

A. Started in oiling the power house of the old Columbia Electric Street Railway Company.

Q. You have worked as a conductor on the street cars?

A. Yes, sir; a little while. I ran as a motorman most of the time.

Q. Were you connected with the company as Superintendent in the strike of 1922?

A. I was.

Q. How long, if you recall, were the street cars stopped during the strike?

Mr. Belser: We enter an objection as to all that testimony on the ground of irrelevancy.

Witness: I don't recall the exact length of time.

Q. It was some two or three weeks?

A. Yes, sir.

Q. Was that the time of the beginning of jitneys in the City of Columbia?

A. It was.

Q. Who started driving the jitneys?

A. The striking street car motormen and conductors.

Q. What was the cause of the strike between the company and the men?

A. We cut the rate of a bunch of conductors.

Q. And you wouldn't take them back?

A. No, sir.

Q. The rest of the men struck?

[fol. 862] A. Yes, sir.

Q. After the strike was declared, did the company take the position that it would or would not take them back?

A. Would not take them back—the men it fired for this particular cause.

Q. Had jitneys been going ever since that time?

A. Yes, sir.

Q. Was the strike ever settled?

A. It was.

Q. When was that done?

A. Of course those fellows who were running jitneys say it was never settled.

Q. When the men came back the company further refused to recognize the union any further?

A. It did.

Q. The strikers were members of the union?

A. Yes, sir.

Q. Did the men who struck, the union men—what did they do about persuading other union men and sympathizers with reference thereto?

A. They got out a badge they wore on the lapel of their coat and said "we walk." All the sympathizers had those badges and none of them would ride the cars.

Q. After you started the cars after the strike, was there any noticeable decrease in the passengers that rode as compared to the number prior to the strike?

A. Yes, sir; considerably over half I would say. Practically nobody at all rode after we started for quite a while, and then it was very light.

Q. What were you paying your motormen and conductors in March, 1927, when the cars stopped running?

A. The men that operated the two men car got fifty cents [fol. 863] and the one man car got fifty-two cents an hour.

Q. Do you remember the order of the Railroad Commission that was dated June 8th, 1926 and went into effect, that allowed the operation—allowed the discontinuance of the operation of the Waverly Line, Shandon Line, Shandon Annex Line, Wales Garden Line, Fair Ground Line from the Union Station to the Fair Ground, and so forth?

A. I do.

Q. Ordered you to keep in operation the line from the Union Station to Ridgewood Union Station to College Place, Union Station and Colonial Heights Lines?

A. That is correct.

Q. Up to June 8th, 1926, you operated all of the lines that they specified in this order?

A. Yes, sir.

Q. After June 8th, 1926, you continued the operation of the Ridgewood Line to the Union Station, the line from College Place to Union Station and the line from Colonial Heights to the Union Station until March 11th, 1927?

A. That is correct.

Q. The College Place Line was the line that went out to Columbia College and out beyond Columbia College over to the lands of North Columbia Land Company?

A. Yes, sir.

Q. That was one of the three lines continued up to March 11th, 1927?

A. It was.

Q. Up to the time the cars were discontinued did the Columbia Railway, Gas and Electric Company rent a building right here on Gervais Street?

A. They did.

[fol. 864] Q. Where was that located?

A. 109 Gervais Street.

Q. That is right across here?

A. Yes, sir.

Q. What did you use the building for?

A. For a transfer station and for the Columbia Railway, Gas and Electric Company office.

Q. Who stayed in there—what employees?

A. My office was in there, and the time-keeper, and cashier, and the motormen and conductors had their rooms there. That is about the extent of it, I think.

Cross-examination.

By Mr. Belser:

Q. You know Mr. Hawkins, I suppose?

A. Yes, sir.

Q. You knew when he came to Columbia sometime during the summer or fall of 1925?

A. I think I do.

Q. He had been in Columbia pretty well continuously from that time to this year?

A. I really don't know.

Q. You know he lives in Columbia?

A. No, sir; I do not.

Q. You know Broad River Power Company or Spartanburg Bus Company paid him $500.00 a month while he managed the Carolina Transit Company?

A. I know nothing of such transaction.

Q. Weren't you present at the hearing before the Railroad Commission?

A. I was.

Q. The evidence shows that you and Mr. Campbell, Mr. Costello, Mr. Peterman and others were there. You heard [fol. 865] Mr. Peterman testify?

A. I heard some of it. I don't know whether I heard his or not.

Q. Did you hear Mr. Peterman testify that the representatives of his company went to the White Company and got credit for the Bus Company?

A. I don't recall that.

Q. You know Mr. Hawkins did manage Carolina Transit Co.?

A. I have heard he was connected with it and seen him around it quite a lot. He was in and out, I understood.

Q. You saw him giving directions around about it?

A. Yes.

Q. Saw him around Columbia quite a number of times?

A. Yes.

Q. During the period beginning 1926 when Carolina Transit Company entered this field until the time Carolina Transit Company left here?

A. I didn't have anything to do with it, and I wasn't interested in the buses, and I didn't check upon Mr. Hawkins at all. I heard he was connected with them.

Q. Didn't you have an arrangement by which you made transfers from your company to the Bus Company?

A. I was instructed to give transfers.

Q. Who did you deal with?

A. Mr. Woodring.

Q. Who did you deal with with the Carolina Transit Company?

A. That was handled at the Arcade Building. I didn't have anything to do with it at all.

Q. You didn't have any understanding with Mr. Hawkins?

A. No, sir.

Q. You were instructed by Mr. Woodring?

[fol. 866] A. Yes, sir; he instructed me to accept transfers from the busses and give transfers to the busses.

Q. Mr. Woodring was General Manager of the Columbia Railway, Gas and Electric Company and Broad River Power Company?

A. Yes, sir.

Q. I believe you testified before the Railroad Commission that you saw busses run sometime a little ahead and behind the street cars?

A. I believe that is about right.

Q. They came into operation in the spring of 1926?

A. I believe that is about right.

Q. They stayed in operation until after the street cars quit?

A. I think they did.

Q. They in a general way sort of took up the lines you people dropped when you dropped some in the fall and summer of 1926?

A. In some instances they did.

Q. After you would drop back apiece, the Bus Company would drop back also soon after that, wouldn't they?

A. I don't know about that.

Q. Your street cars, during the last few years of operation, were in pretty bad condition?

A. They were.

Q. Also the tracks were in bad condition?

A. Yes, sir; bad condition.

Q. You have had enough experience to know that your street cars would get more patronage if you kept them in good condition than bad condition?

A. I would rather ride on one in good shape than bad shape.

Q. Do you think conditions were very much worse with [fol. 867] the street car company after 1922 than it was beforth that—after the strike came about—the traffic?

A. Yes, sir; it was a whole lot worse.

Q. After that you didn't take as good care of the street cars and the tracks about 1922?

A. We — taken as good care of them as we could—as we had money to take care of them.

Q. Did you keep your cars in as good condition after 1922 as before that, generally?

A. I would say about as good shape.

Q. The tracks about 1926 and 1927, when you began discontinuing activity, were in about the same conditions they had been for years?

A. I wouldn't say the track. The track gradually went down and so did the cars. The cars we were running—some were in fair shape and some in bad shape.

Q. Will you say that your cars and tracks were generally in a better condition or worse condition during the period

from 1922 to 1927 than they were in during the period 1922 to 1927?

A. Worse shape.

Q. During the latter five years?

A. Yes, sir.

Q. Very much worse?

A. Yes, sir.

Q. How many cars has the company down in the car barns now?

A. About twenty-five, I believe it is. With one exception, after the Barstow Company took the property over, they painted the cars up and worked the cars over and did a lot of track work.

Q. That is about 1925?

A. Yes, sir.

Q. This statement filed by Mr. Costello shows they spent [fol. 868] twenty-five Thousand ($25,000.00) Dollars for maintenance of way and Thirty-two Thousand ($32,000.00) Dollars for maintenance of equipment, is that about right?

A. That is about right.

Q. Then the track was in better condition than it was several years before that?

A. Yes, I would say. They welded a lot of the joints. It was some better for a while. Main Street was in bad shape—the paving. It is still in bad shape.

Q. Do you know anything about the amount of money spent in 1925 on the equipment and tracks and so forth as compared with what the company spent the preceding years?

A. I couldn't say. They did a whole lot more work in 1925 than they done some four or five years prior to that.

Q. How did the work in the repairing done on the equipment and tracks compare with what was done on the equipment and tracks preceding 1922—about the same or not?

A. State the question again.

Q. How did the amount of work which was done on the tracks and equipment in the year 1922 compare with the amount of work done on the tracks and equipment during the years preceding 1922?

A. I would say it was less work done back prior to 1922.

Q. In the year 1925, you say Broad River Power Company did a good deal of work?

A. They did—spent a lot of money on the tracks and cars.

Q. Was that amount about the same or less than the Columbia Railway, Gas and Electric Company used to spend on its track and equipment preceding 1922?

A. It was more.

Q. More in 1925?

A. Yes, sir.

[fol. 869] Q. Than it used to do before 1922?

A. Yes, sir; I would say so. That varies some, now, I would say. That was just on repairs. They didn't buy any cars. Back prior to that they bought cars.

Redirect examination:

Q. Did you catch Mr. Belser's question that Broad River Power Company spent money on the tracks in 1925?

A. Columbia Railway, Gas and Electric Company.

Q. Are you a little bit deaf?

A. Yes, sir; I got burned in the power house.

Q. Did you mean to say Broad River Power Company?

A. No, sir; Columbia Railway, Gas and Electric Company spent the money.

Q. Do you recall a man by the name of Hill?

A. I do.

Q. Did he work under you for the Columbia Railway, Gas and Electric Company?

A. Yes, sir.

Q. In what capacity?

A. He was track foreman for about eight or nine years. Track foreman and Bridge foreman.

Q. Who did he work for?

A. Columbia Railway, Gas and Electric Company.

Q. How did you take his men out to work on the tracks ordinarily?

A. As a rule he taken them out on the work car. In some cases where we had a few fellows to send out, we would get a truck from the Broad River Power Company and send them out.

Q. Did you pay the Broad River Power Company for that truck?

A. Yes, sir.

Q. This money that Columbia Railway, Gas and Electric Company spent at the time they repaired the system, didn't [fol. 870] they pretty well start in 1924?

A. I believe it was the latter part of 1924.

Q. Has anybody cut the street car track on Wheat Street?

A. Yes, sir.

Q. Who did it?

A. The City of Columbia or the contractors. The City Engineer came to me about it.

Q. Did you give him consent to do it?

A. I did not. I referred him to the Legal Department.

Q. Have they torn up the track at any other point?

A. Yes, sir; down through Wales Garden they tore it up and put in a storm drain.

Q. Did they put that back?

A. No, sir; still torn up.

Q. What has the City done along Harden Street, from Gervais Street running north—have they done anything about it?

A. They have covered the tracks all up about six inches in dirt.

Q. What have they done along Bull Street from the end of the paving West of Laurel Street?

A. Covered it up.

Q. How deep did they cover it up?

A. I would say an average of six inches.

Q. Could you run cars up the Wales Garden Line?

A. No, sir.

Q. Could you run cars in Shandon Annex line on Wheat Street?

A. No, sir.

Q. Could you run cars up on Bull Street?

A. No, sir; Blanding Street is in the same shape near the old shop lines.

[fol. 871] Q. After the street railway stopped, where did Mr. Hill get a job?

A. With the Broad River Power Company, with the Right of Way Department, clearing out and constructing power lines.

Q. What was its attitude as to giving jobs to former employees of Columbia Railway, Gas and Electric Company?

A. They tried to give everybody they could jobs with the Broad River Power Company?

Recross-examination:

Q. As long as you people ran the cars, you kept somebody for the purpose of sweeping off the tracks and keeping them clean?

A. Yes, sir; track greaser and so forth.

Q. If we put these little sections back together, will you folks run the cars without any order of Court?

A. I couldn't answer that. There is quite a lot to put back together before you run any cars here.

Q. There is a little piece over on that street where they paved on the Shandon Annex Line about twenty or twenty-five feet?

A. I think that is about fifty feet of pavement.

Q. When is the last time you been over the system?

A. I go over it quite often looking around, seeing what's happening and so forth.

Q. Interested in your old haunts?

A. No; just passing through the City and I saw these car lines.

Q. Somebody of course had to remove the track or some arrangement made about it when they put in the storm drain at Wales Garden?

A. I suppose so.

Q. It was put back?

[fol. 872] A. No.

Q. It can be put back?

A. Yes.

Q. It is the custom between the railway company and the City that the railway company lay the paving between the tracks where it runs on paved streets?

A. I understand they have a contract on that. I have never seen it.

Q. The Bus Company, after they came in here, they took a few passengers away from Broad River Power Company's cars or Columbia Railway Gas and Electric Company's cars?

A. Yes, sir; they did. They would run along behind and take up a large percentage of the passengers. They and the jitneys together took a good many passengers—they taken about all, I think

Redirect examination:

Q. When you spoke of paving, do you know anything about that yourself?

A. Yes, sir; I done quite a lot of paving—practically all of it.

Q. Under the provisions of this City Ordinance?

A. Yes, sir; we paved three feet on the outside of each rail.

Recross-examination.

Q. I believe that you testified that Mr. Peterman, that when these street cars were stopped on the morning of March 11th, 1927—it was done just as a result of a conference between you and Mr. McLain and Mr. Peterman?

A. I don't remember. I was instructed to take them off. Just who I talked to, I don't know. I think it was Mr. Peterman.

Q. You did not consult the Railroad Commission?

A. I did not.

Q. You remember hearing Mr. Peterman saying they just [fol. 873] did it on their own man?

A. I wouldn't like to say. That has been a long time ago. Mr. Peterman instructed me to take the cars off and that is all I know about it.

May 31st, 1928.

OFFERS IN EVIDENCE

Mr. Lyles: We want to offer in evidence from the Forty-eighth Annual Report of the Railroad Commission, dated 1926, the section at page 8-A, under the heading "Electric Railways."

(The following is an exact copy of the above section:)

"Electric Railways

"The Electric railways operating in South Carolina, and those furnishing what is known as interuban service, are in reasonably good financial condition and are able to perform the functions for which they were intended. This is not the case, however, with what are generally known as

street railway systems which perform service in municipalities, and in some instances to and from localities located near the municipalities they are expected to serve. It is needless for the Commission to say, for it must be general knowledge by this time to all who have had an opportunity to look into the financial condition of such carriers, that they are, to say the least, financially sick, with the greater number of them desperately ill. How long some of these companies can continue to perform the service for which they were intended only the future can decide. However, conditions may so change in the near future as to relieve the situation now existing, and in this event, it is possible that they may continue to furnish service, but if conditions remain for any length of time as at present it will result seriously for this class of carrier."

Mr. Belser: We think it is irr-levant—this case being a matter where the whole thing is bound up by contract, we do not think it matters what the report of the Railroad Commission is.

[fol. 874] CHARLES M. TEW recalled.

Direct examination.

By Mr. LePine:

Mr. Belser: With reference to this portion of the Railway Commission's report, we think that, if any part is to be incorporated into the record, the portion on "Electric Power, Light and Gas Utilities would be as appropriate, and we would like to have that copied into the record as well, which is shown on page 9-a.

The Court: All right, sir.

(The following is a true and correct copy of the statement of the Railroad Commission, appearing on page 9-A and a portion on page 10-A:)

"Electric Power, Light and Gas Utilities"

"This class of utility has grown in South Carolina in the past few years beyond expectation. The present year has overshadowed all previous years. A great number of high

class, high voltage, up-to-date transmitting power lines have been installed in all portions of South Carolina, and especially is this true as to the central and what is known as the eastern or coastal territory. Wide fields are still open for additional service such as these utilities perform. Due to the many changes and additions, as above outlined, installation of up-to-date equipment, and the need of and request for power of this kind, the Commission has been kept exceedingly busy along this specific line.

"The Commission has done its part in encouraging all utilities, and especially this specific class of utility. At the same time, it has been vigilant in seeing that the public was properly cared for in the way of service, rates and equipment that would give such service as the patrons need and demand at the most reasonable cost that has ever been [fol. 875] known in South Carolina. As a result, such lines are being extended into the smaller towns and rural districts, which the Commission trusts will tend to the welfare of the patrons and the up-building of our State. The electrical engineer of this department has been very diligent in seeing that the best that can possibly be obtained was made available to the citizens of South Carolina.

"The records of the office show so many extensions and installations that if we were to undertake to make a full report in regard to same we would have to violate the law by taking up too much space in this report; but these records are open for the inspection of the public and the Commission takes pleasure in explaining to interested parties everything that it can in connection with any matters under its jurisdiction.

"Other utilities under the jurisdiction of the Commission have made their pro-rata share of progress for the past year, each and every department apparently putting forth all the energy at their command to give to the public the best quality of service at the least possible cost. In short, the Commission has been kept busy the entire year to see that such results as have heretofore been described in this report are available to the citizens of South Carolina."

By Mr. LePine:

Q. Mr. Tew, when you were on the stand yesterday you were requested to bring in the monthly reports for the

month of December, 1920, 1921, 1922 and 1923, which as I understand it, show in a compilation the total receipts and total operating expenses of the street railway department of Columbia Railway, Gas and Electric Company for those years?

A. That is correct.

Four reports marked for identification No. A-29, A-30, A-31 and A-32.

[fol. 876] Q. I show you those four books marked A-29, A-30, A-31 and A-32 for identification, and I will ask you if those are the reports referred to?

A. They are.

Q. Those books contain a correct statement of the operating receipts and expenses of the Columbia Railway, Gas and Electric Company, the railway department, for those four years?

A. They do.

Q. I show you Exhibit A-19, which contains a summary of the receipts and operating expenses of Columbia Railway, Gas and Electric Company for, among others, the years 1920, 1921, 1922 and 1923, and ask you if you have also examined that?

A. Yes, sir.

Q. I observe by examining these four monthly reports for December that you say you made, and comparing them with Exhibit A-19, that your reports for these four years show a larger operating deficit in the street railway department than is shown by the Exhibit A-19, which is in evidence, and ask you to examine this sheet and tell me what is the difference between the statements as shown on your reports for those four years and the statements contained in the Exhibit A-19 for those four years?

A. The difference consists in the fact that my report includes depreciation, which that Exhibit A-19 does not. Mine does not include taxes, which that does.

Q. The amount of those items are shown on both reports? Your report shows the amount of depreciation you have charged in those years?

A. Yes, sir.

Q. The other reports shows the amount of taxes charged in those years?

A. The total taxes—not the amount allocated to the street railway. We did not allocate the taxes among the [fol. 877] different departments.

Q. Your report shows the taxes for the whole company and does not show the street railway taxes?

A. That is right.

Q. The other report shows the taxes of the street railway department under item of operating expenses of the street railway department?

A. That is true.

Statement of earnings of railway department, including depreciation and before deducting taxes for the years, prepared by Mr. Tew, introducel in evidence and marked Exhibited A-33.

Q. I understood you to say that in all other respects the statements showed the same, except for taxes and depreciation which you have mentioned?

A. Yes, sir.

Q. Take Exhibit A-29 and tell me which of the operating expenses of Columbia Railway Company for the year ending December 31st, 1920 are general expenses paid in one lump sum and distributed among the departments?

A. There is an item here of Six Thousand Nine Hundred Sixty and 29/100 ($6,960.29) Dollars, under the head of general and miscellaneous expenses. Some of the items composing that amount are allocated or distributed. In other words, apportioned among the departments, but not all of them. There is one item here of Thirty-five Hundred ($3,500.00) Dollars for one month—that is a specific railway charge to "damages and injuries." That is more than half of the Sixty-nine Hundred Dollars. I would say about Twenty-five Hundred Dollars of the Sixty-nine Hundred and Sixty Dollars is apportioned, but the others were specifically charged.

Q. And represent items of expenses specifically incurred [fol. 878] by the railway department?

A. Yes, sir.

Q. Are there any charges in that report of any of these reports which you have made which are allocated aside from the items going under the heading "general and miscellaneous?"

A. There were not.

Q. The other expenses shown on the reports were actual expenses made by the street railway department for the street railway department?

A. That is right.

Q. Can you tell me the basis on which items under the heading "general and miscellaneous," which were apportioned—the basis on which they were apportioned?

A. The first two items constitute the bulk. "Salaries and expenses of general officers," and "salaries and expenses of general office clerks"—they constitute the bulk of that.

Q. Upon what basis were they apportioned among the departments?

A. From the basis of gross earnings of the previous year.

Q. That is true as to all allocations you have made in your reports of general and miscellaneous expenses?

A. That is true.

Q. Those items of general and miscellaneous expense were items of expense that were incurred for the benefit of all departments?

A. All departments.

Four reports made by Mr. Tew, marked for identification heretofore, introduced in evidence and marked Exhibits A-29, A-30, A-31 and A-32.

Mr. Belser: We object to all on the ground of irrelevancy.

The Court: Admitted, reserving the question of relevancy.

Q. At the time, Mr. Tew, these reports from 1920 to 1923, were made, the Columbia Railway, Gas and Electric [fol. 879] Company had three departments—electric, gas and street railway?

A. Yes, sir; three.

Q. You kept a separate account of the receipts and disbursements of each department?

A. They were just as separate as if they were separate companies, so far as I could do it.

Q. The allocation of general and miscellaneous expenses which you say is made in these reports was made by taking the total general miscellaneous expense of the company which could not be specifically charged to any one depart-

ment and allocating that on the basis of the gross earnings of each department, was it not?

Mr. Belser: We are dealing with a system and method of bookkeeping, and this witness, I suppose is a better bookkeeper than most of us in his own way.

Mr. Le Pine: He has already stated that, and this is merely a summary of what he has said.

The Court: All right, sir.

Witness: It was.

Q. I show you the statement for the month of December, 1920. Under the head of operating expenses of railway department, I believe you stated there were about Twenty-five Hundred Dollars in general and miscellaneous expenses which represented items which were apportioned?

A. That is my estimate now.

Q. State in a general way what nature of charges they were that make up the Twenty-five Hundred Dollars?

A. Salaries of General Officers and Salaries of General Office Clerks, rent, miscellaneous general expenses, which is a comparatively small item, insurance, store expenses and staple expenses.

Q. Do you know anything about the method in which expenses of that character are ordinarily allocated by audi-
[fol. 880] tors?

A. There were different basis for the allocation. It is arbitrary anyhow.

Q. What are those methods?

A. Some take the gross earnings, as I did, and some the net earnings, and some the total expenses.

Q. The method which you adopted is one which is frequently or usually used in utilities?

A. Frequently, I would think. I wouldn't say usually.

Q. It is a recognized method?

A. Yes, sir.

Q. When you were on the stand yesterday you stated that the book which was here contained merely the operating expenses, and that we did not have here the books which showed the operating receipts?

A. Yes, sir; that is correct.

Q. I wish that you would examine these books here and see if these are the books which show the receipts of the railway department of Columbia Railway, Gas and Elec-

tric Company for the years 1920, 1921, 1922 and 1923? These three books you have here cover, as I understand it, the receipts from the railway department from January 1st, 1920 to September, 1924?

A. That is right.

We would like to have these marked in evidence.

Cash and bank accounts No. 4 of Columbia Railway, Gas and Electric Company introduced in evidence and marked Exhibit No. 34.

Cash and Bank Accounts No. 5, of Columbia Railway, Gas and Electric Company, introduced in evidence and marked "Exhibit No. 35.

Cash and Bank Accounts No. 6 of Columbia Railway, Gas and Electric Company introduced in evidence and marked Exhibit No. 36.

Q. These books, Mr. Tew, and those reports and the dis-[fol. 881] tribu- record, marked in Evidence Exhibit A-14, can you tell me whether these are accurate and correct accounts of the Columbia Railway, Gas and Electric Company kept by you?

A. They are.

Cross-examination.

By Mr. Belser:

Q. You used to be the General Auditor for this company, Columbia Railway, Gas and Electric Company?

A. I was Auditor.

Q. You have been employed by the Broad River Power Company and are now?

A. Yes, sir.

Q. You have your office down there?

A. Yes, sir.

Q. Mr. Costello has been Auditor since you were?

A. He is Auditor now.

Q. Do you know him?

A. Yes, sir.

Q. Is he in this hall?

A. Yes, sir.

Q. Has he been here throughout these hearings?

A. I think he has.

Q. Mr. Costello has been Auditor here, living in Columbia since you gave up the job?

A. Yes, sir.

Q. Have you got the books that show the construction or can you tell me on the books where the sub-station was constructed, what it cost and what department it was charged to?

A. No, I cannot. That building was constructed before my time.

Q. Do you know what department the up-keep of the sub-station was charged to while you were connected with the [fol. 882] company—the building and employees?

A. The pay of the employees was charged—there was very little up-keep of the building—the salaries were charged to the departments for which they worked. For instance the rotary converters that ran the street cars was there—the salaries of the men were charged to the railway street car, the incandescent light machine was there, and the salaries of the men was charged to the Light Company.

Q. About what portion of the salaries of the men that worked there was charged to the Street Railway Company?

A. I don't remember.

Q. When was the — constructed? What was that charged to when it was constructed?

A. I presume the car barn proper was charged to the railway construction.

Q. Did your company keep a bank account?

A. Yes, sir.

Q. Keep separate bank accounts or one general bank account?

A. Just one general bank account for ordinary disbursements.

Q. Will you take this statement for 1923 and 1924 and tell me what the total depreciation that you charged off there for each of these years for the whole business—all departments? Give it to me separately and we will add it up? Take the year 1923 first?

A. The Electric Department, Fifty-one Thousand Six Hundred ($51,600.00) Dollars. For the Railway Department, nothing. That is for the year 1923.

Q. What were the other departments?

A. There was nothing for the Gas Department.

Q. Turn to the year 1924?

A. I haven't got that. I didn't make that statement out.

Q. Did you prepare a depreciation charge for the Electric Department?

[fol. 883] A. Yes, sir; I did.

Q. On what basis did you make that?

A. I don't remember. It was a certain percentage, but I don't remember. I think it was more a rough guess than anything else.

Q. Would you say it was fair and proper?

A. I think so.

Q. About one per cent on the value of the electric property?

A. I don't remember what the percentage was.

Q. Will you take Exhibit A-19 and see what was charged for the year 1924 for depreciation?

A. I am not familiar with this report particularly.

Q. Did I understand you to say that in this statement, which is marked A-33 and headed "Statement of Earnings Railway Department, including Depreciation"—did I understand you to say that that correctly represents the operating expenses, including depreciation for that year 1923?

A. Yes, sir; that includes it, but it seems there was no depreciation charged in that year.

Q. This tabulated statement we have is not a correct copy of this statement you issued that year?

A. That is at the top—the bottom is not.

Q. This says "including depreciation"?

A. Yes.

Q. How much depreciation is shown?

A. There was none charged in 1923. This leaves out the depreciation but puts in the taxes.

Q. For the year 1924, you say you haven't a statement there?

A. It was not made out by me at all. I had ceased to be Auditor then.

Q. You do not verify this little exhibit, as Mr. Tew's [fol. 884] statement for 1924?

A. I have checked that part against the earnings.

Q. You didn't keep the books for the year 1924?

A. No, sir; I don't know anything about that.

Q. So far as Exhibit A-33 is called Mr. Tew's statement and gives operating expenses and income for the year 1924, that is not based on any statement made by you?

A. Not for 1924.

Q. What depreciation did you charge? This thing says "including depreciation" for the year 1924. Have you any way to check on that at all?

A. I didn't make up that report, and I can't say what was charged.

Q. Did you keep the books up to June 30th, 1924?

A. Yes, sir; I did.

Q. I notice the statement published in the Financial and Commercial Chronicle of January 3rd, 1925, reading from page 85 of Exhibit A-25, says "total depreciation charged for the year 1924 One Hundred Forty-three Thousand Nine Hundred Ninety Nine ($143,999.00) Dollars—do you see that?

A. Yes, sir.

Q. I notice the property and franchises for that same period valued at Ten Million Five Hundred Sixty-two Thousand ($10,562,000.00) Dollars—do you notice that?

A. Yes, sir.

Q. Is that depreciation correct—did you make it?

A. I did not.

Q. You don't know whether it is right or wrong?

A. No, sir.

Q. Suppose it is right? Mr. Campbell testified it was right—that is about one and a half per cent on the value of the property?

[fol. 885] A. I think so.

Q. Do you know what depreciation you did charge on the property, if anything, for that period of June 30th, 1923, to June 30th, 1924?

A. No, sir; I don't remember.

Redirect examination.

By Mr. LePine:

Q. I notice that in some of these years shown by these reports you charged off depreciation and some years you did not. Can you explain what determined the question whether you charged off depreciation?

A. It was largely dependent upon the ability of the department to stand it.

Q. In other words it depended upon the amount of earnings for the period?

A. Yes, sir; exactly.

Q. It had no reference to the question whether the property had depreciated or had not?

A. None in the world.

Q. Did that same principal apply to the amount you charged off for depreciation as to whether the earnings were able to stand a depreciation charge?

A. I don't remember that it did. When we charged off any, we tried to charge off an adequate amount for the period in question.

Q. I believe you said you kept the books down to September, 1924, is that correct?

A. That is correct.

Q. My attention has been called to the fact that in asking you with reference to these monthly reports for December in these years, I merely askel you if the reports as to [fol. 886] 1920 to 1923, inclusive?

A. Yes, sir.

Q. You have not testified as to the report of 1924, which was made after September, 1924?

A. No, sir; I couldn't.

Mr. LePine: That being the case, we will consent that the statement under the statement "Mr. Tew's statement", also item 24 on Mr. King's statement by the line, and the total of Mr. King's statement be stricken from the exhibit.

Mr. LePine: I would like to make a statement. We have offered, and there has been received in evidence the books showing th receipts and expenses of the railway department of the Columbia Railway, Gas and Electric Company down to June 15th, 1925, and also the books showing the receipts and disbursements of that company in full from June 15th, 1925 to date. We have also offered, and there has been received in evidence, a schedule or statement taken from the books, which is marked Exhibit A-19, containing in detail the receipts and expenses of the railway. Counsel on the other side has an opportunity to examine the books. We will keep the books open at all times for inspection, but, in order to reduce the size of the record, we would

like the privilege, by consent of counsel, of withdrawing the books and having the statements substituted in place of the books, reserving the right to counsel on the other side to check the accuracy of the statement marked A-19 with the books at all reasonable times.

The Court: That is entirely satisfactory to me.

Mr. Belser: We have no objection to that. We do not waive any of our objections we made about the relevancy and competency of the proof of the books.

The Court: The books are in evidence, and the questions of relevancy are reserved.

[fol. 887] Mr. Belser: We have not conceded the correctness of the books.

The Court: I think the books have been proved in the regular way.

Mr. Belser: It was not my understanding. I never conceded that Mr. King, from our standpoint, was a proper person to prove these books since they have had charge of the company. I take the position that Mr. Costello was the proper person to do that proving. We do waive the necessity of producing any witnesses who made the entries in the books.

The Court: We don't want to have any misunderstanding between you gentlemen about that. I think Mr. Edmunds made the statement that these gentlemen on the other side would be required to prove the books up to the time that Mr. King took charge. I understood him to say that he would expect the respondents to prove the books up to the time Mr. King took charge.

Mr. LePine: You will recall that when I came back in the noon session I stated I would like to have the statement made on the record as to what the understanding was.

Mr. Belser: Our counsel here says you overruled us on Mr. King?

The Court: I said when the matter first came up that I thought Mr. King had been qualified to testify about the books, and then Mr. LePine said they would not take any changes on the matter.

Mr. LePine: I also made the statement after the recess.

Mr. Page: I didn't understand Mr. Edmunds to waive the objection that had been made, and that we had a right all the way through to object to Mr. King proving the

books. Mr. King was in Pennsylvania, and the books kept [fol. 888] and made here in Columbia, and although he might direct things and certain methods of book-keeping, that question was argued before Your Honor, and I didn't think that Mr. Edmunds intended to waive that objection, if Your Honor construes that as waiving the objection.

The Court: I thought Mr. Edmunds' statement was very clear. I thought, as I stated in the outset, Mr. King's testimony qualified him to testify as to the books. Later Mr. Edmunds' statement to my mind was perfectly clear. If he did not mean to say that he did, that would be different. I had the very thing in mind you gentlemen were talking about.

(At this point Mr. Edmunds' statement was read in open Court from the notes of the stenographer.)

Mr. LePine: Inasmuch as I stated at that time that there was a question in the minds of some of my associates as to what the effect of the Assistant Attorney General's statement was, and inasmuch as the statement reads as the stenographer has stated, I think that the statement is clear and requires no explanation, and, unless we are met with the question at this time that one attorney on the other side cannot represent the whole side and that each one represents some different interest and are appearing separately in this case and each one making their own objections and stipulations, I do not see that there is anything for us to do. It seems to me the fact that General Page was absent at that time, doesn't give him the right to interpose objections now, which his associates did not make. We started to prove the details of these records. It seems to me it is an absolute waste of time.

The Court: I am very sorry Mr. Page was not present. Mr. LePine got up and made the statement right at the outset.

Mr. Belser: I feel a little embarrassed about it. It was never my understanding that we waived the point of having [fol. 889] Mr. Costello, the Auditor who supervised the books, to do that. I can understand the statement of Mr. Edmunds, how that counsel on the other side would take the position that they have about it, and that the referee would

also have that view about it. Of course I also see the position that General Page is in, and I think perhaps there might be a genuine misunderstanding about it. I am perfectly willing to concede from my standpoint—and I represent everybody in the case, and I think I can speak with the approval of the Attorney General, who is the principal client, that we will concede that other witnesses, if put on the witness stand, would testify that the books are correct. I do think we are hardly in position to admit the records of the books. We would admit other witnesses would testify they are correct.

The Court: I don't mean to say you gentlemen admit the books are correct.

Mr. LePine: All we asked, and all was conceded, as I understood, was that the books had properly been proved in evidence.

Mr. Page: I certainly don't want to go back on anything Mr. Edmunds said, and I don't intend to do that. I would like to request this, that Mr. Edmunds be permitted to state just what he did intend to say, and would like for him to do it at this time, while all the parties have their witnesses here. We do not want to take any advantage of them. I think all are permitted, and ready to concede, with Mr. Belser, that the witnesses would testify those books are correct, but I don't concede that, and I don't think that Mr. Edmunds intended to concede that the books had been properly proven. It was stated here during the argument that there might be a number of witnesses. I believe your Honor, in [fol. 890] your ruling on the case, referred to the case where entries had been made probably by a thousand people and that that would not be necessary to call out all those, and that Mr. Edmunds intended to say, as I understand, that that would not be required, but where they have a local man in charge of the books, whether he makes the entries himself, if they were made under his supervision, that he is the proper person and not the man in Pennsylvania, who never sees the books and doesn't know the handwriting on the books. If I am wrong, I apologise to Your Honor. I don't mean to go back on anything Mr. Edmunds has said.

The Court: No apology is necessary at all. I have no criticism of your view of the matter at all. I thought the understanding between Mr. LePine and Mr. Edmunds at

that time was perfectly clear—particularly in view of the fact that Mr. LePine asked the question at the time. That was the way it occurred then.

Mr. LePine: I want to ask this—whether Mr. Edmunds had authority to speak for the intervening petitioners at the time he did speak on Tuesday afternoon, or is his authority denied? If Mr. Edmunds' authority is denied, I would like to know who appears for who on this trial, so in the future we will know what concessions to make.

Mr. Nelson: I take it, any statement made by another counsel is binding on the other.

The Court: I assume that you speak for everybody, unless you qualify your statement.

Mr. Nelson: I discussed it with Mr. Edmunds, and my view of it is, any person who had supervision of the books is a proper one to testify. A bank cashier is the proper one to testify to the books made in his bank.

The Court: The only feature that gives me any trouble at all is, we are speaking of the statement Mr. Edmunds made [fol. 891] when he isn't here. My recollection of it is very clear.

Mr. LePine: I would like to know what the position of counsel on the other side is with reference to using Exhibit A-19 in place of the books, so that the books may be withdrawn from the actual evidence, subject to the right of inspection that I mentioned at the start of this discussion. I might state further that, if counsel stipulates to that effect, it is my intention to ask permission to withdraw Exhibit A-19 long enough to make copies of it so that we may have them and counsel on the other side will have them.

Mr. Belser: About the matter of the correctness of the books—Your Honor doesn't understand that we admit the correctness of the books?

The Court: Not at all.

Mr. Belser: But that they have been correctly proved?

The Court: That is it.

Mr. Belser: If that is your Honor's understanding of Mr. Edmunds' statement, we have no disposition to argue it further. We are willing to accept the statement made by Mr. LePine as to the statement and the books being withdrawn.

The Court: Yes, sir; I assume also that the books will be available to the Referee or any counsel at any time.

Mr. Lyles: Absolutely.

The books which are being withdrawn on the concession just made are Exhibits A-15, A-16, A-17, A-18, A-14, A-36, A-35 and A-34.

Mr. LePine: Mr. Lyles has suggested, and I believe it is a good one, while we have in this Exhibit A-19 a statement for the whole year 1924, which has been offered and admitted in evidence, inasmuch as it appears that Mr. Tew kept the books which are in evidence up until September, 1924 and subsequent to that date they were kept under the [fol. 892] supervision of Mr. King, while it may not be material for any purpose, we make up a separate statement for 1924 from the books showing the receipts and earnings from January 1st, 1924, to September 8th, or whatever date in September Mr. Tew ceased to have charge of the books, and then a statement from that date on to the end of the year showing the same items for that period, to be an extension of Exhibit A-33.

Mr. Belser: We have no objection to that.

Recross-examination.

By Mr. Belser:

Q. I hand you here this Exhibit A-33, containing balance sheet for the year 1923, statement of the assets and also of the liabilities?

A. Yes, sir.

Q. I notice that you have called reserves depreciation Eight Hundred Thirty-three Thousand Eight Hundred Fifty-seven and 52/100 ($833,857.52) Dollars?

A. Yes, sir.

Q. That is the depreciation reserve set up for Columbia Railway, Gas and Electric Company during that year?

A. No, that is accumulated for all of the years.

Q. It is set up on the property of Columbia Railway, Gas and Electric Company?

A. Yes, sir.

Q. Eight Hundred Thirty-three Thousand Eight Hundred Fifty-seven and 52/100 ($833,857.52) Dollars?

A. Yes, sir.

Q. You have also set up for Parr Shoals depreciation Three Hundred Four Thousand Five Hundred Forty and 71/100 ($304,540.71) Dollars?

A. That is right. That is on the property of Parr Shoals Power Company.

[fol. 893] Q. That is about one million one hundred thirty some odd thousand dollars set up for depreciation?

A. Yes, sir.

Q. The physical property on which that is set up is carried under the head of assets Five Million Two Hundred Ninety Thousand Seven Hundred Forty-four and 81/100 ($5,290,744.81) Dollars?

A. That only includes though Three Hundred Twenty-seven Thousand Eight Hundred Thirty-six and 25/100 ($327,836.25) Dollars on the Parr Shoals property. The other is shown on the Parr Shoals books.

Q. In any event it is in the neighborhood of between fifteen and twenty per cent. of the total property you have set up as reserves for depreciation?

A. Yes, sir.

Q. It is over twenty per cent?

A. I don't know, I haven't figured it.

Redirect examination.

By Mr. LePine:

Q. When you speak of percentage you meant percentage of the figures as to Parr Shoals construct and the property account and not the Parr Shoals property itself, is that true? I meant when Mr. Belser asked you about percentage being fifteen per cent.—that is on the property of the Columbia Railway, Gas and Electric Company? This item of Eight Hundred Thirty-three Thousand some odd dollars?

A. Yes, sir.

Q. The Three Hundred Four Thousand some odd dollars is on the property of Parr Shoals Power Company of which the Columbia Railway, Gas and Electric Company was the owner of the common stock?

A. Yes, sir.

Recross-examination:

[fol. 894] Q. I notice also that under the head of assets there is real estate carried One Hundred Ninety-six Thou-

sand Seven Hundred Eighty-one and 50/100 ($196,781.50) Dollars?

A. Yes, sir.

Q. There wouldn't be any depreciation really on that?

A. No sir, it is not calculated on that.

Q. You testified you set up depreciation only when the company's funds could stand it?

A. Yes, sir.

Q. You carried a surplus for that year of Three Hundred Seventy Thousand Nine Hundred Seventy-three and 51/100 ($370,973.51) Dollars on this statement?

A. That is right.

Q. I notice this statement, that is carried on this Exhibit No. A-25, copy of the Chronicle, carries surplus at Five Hundred Twenty-two Thousand Five Hundred Sixteen ($522,516.00) Dollars?

A. I don't know anything about that.

Q. So that between this period of December, 1923 and June 30th, 1924, they set up as additional surplus the difference between Three Hundred Seventy Thousand Nine Hundred Seventy-three and 51/100 ($370,973.51) Dollars and Five Hundred Twenty-two Thousand Five Hundred Sixteen ($522,516.00) Dollars?

A. That seems to be right.

Q. That is One Hundred Fifty some odd thousand dollars?

A. Yes, sir.

Q. You do not set up a surplus unless the company is doing a fairly good business?

A. I judge not.

Redirect examination:

Is there anything in those sheets or reports you have here here which would show you the property valuation or book [fol. 895] valuation of the Parr Shoals property on which that depreciation was charged?

A. No, sir; there is not. We did not make out a separate balance sheet for the Parr Shoals Company. It is just a holding company you know.

Q. The valuation is not shown on it?

A. No, sir.